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THE  
LAW AND PRACTICE  
OF THE  
SUPREME COURT OF JUDICATURE.

BY  
ARUNDEL ROGERS, ESQ.,  
BARRISTER-AT-LAW;  
AUTHOR OF 'THE LAW OF MINES, MINERALS, AND QUARRIES.'



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TO  
THE RIGHT HONOURABLE LORD CAIRNS,

LORD HIGH CHANCELLOR,

*This Volume is Dedicated,*

BY PERMISSION,

AS A HUMBLE TRIBUTE OF RESPECT,

AND IN RECOGNITION OF THE EMINENT SERVICES RENDERED BY  
HIS LORDSHIP TO THE NATION,

IN THE IMPROVEMENT OF OUR LAWS AND  
ADMINISTRATION OF JUSTICE,

BY

THE AUTHOR.

INNER TEMPLE,

*October, 1875*







## PREFACE.

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THE prosperity and happiness of a people, depend very much upon the due administration of the Laws under which they live and by which they are governed. For

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N.B.—The author has much pleasure in stating, that he is indebted to certain notes between pages 459 and 471, to Messrs. Lely and Foulkes' "Judicature Acts," and that a reference to their Book was accidentally omitted.

himself to recent legislation only; but he had not been long undertaken the task, than he discovered the necessity of treating the subject upon a broader basis. Accordingly, on the passing of the Judicature Act, 1873, some attention was given to Legal and Constitutional History, with a view of presenting to the reader in a tangible form, the origin of Common Law and Equity, and the gradual introduction of the system under which the various Courts of the Realm, became independent of each other and administered the same laws upon distinct principles. These points of



history are traced from the Norman Conquest to the reign of our Queen, and the various efforts made in our day to reconcile the conflict between Law and Equity, are concisely detailed, and form the subject of the First Chapter of this Volume.

The Second Chapter contains a summary of the Jurisdiction of the several Courts existing at the time of the passing of the Judicature Acts. The questions with regard to which these Courts have already exercised both a Legal and Equitable Jurisdiction are considered, and how far their jurisdiction has either been preserved or not interfered with by the Judicature Acts, is here pointed out. This Chapter, although mainly treating of the Superior Courts, is not confined to them, but includes several Inferior Courts which are more or less affected by some of the provisions of the new law. We venture to think that we have here referred to several conflicting judgments, upon questions which came before the Courts during their independent existence, which will serve as a guide to the construction likely to be placed upon them, by the Supreme Court, when administering Law and Equity simultaneously.

The Third Chapter is a summary of the main provisions of the Judicature Acts, 1873 and 1875. It presents at a glance, the principal alterations effected by those Statutes in the Law and Procedure of our Courts, and will be a help to the fuller consideration of the subject as set out in the subsequent Chapters.

The Fourth Chapter is a verbatim copy of the Judicature Act, 1873, and contains explanatory observations, and cites authorities in reference to the principal pro-



visions of the Statutes. The amendments made by the Judicature Act, 1875, are noticed. It is the Statute of 1873 which contains the two important provisions, that Law and Equity shall be concurrently administered in the Supreme Court, and that when in conflict the Rules of Equity are to prevail. These two provisions alone will give some value to Chapters I. and II., in which the conflicting principles of Law and Equity are considered.

The Fifth Chapter is a verbatim copy of the Judicature Act, 1875; the Orders and Rules of Court, Forms of Pleadings, and the Procedure and Practice of the Supreme Court. Explanatory notes to the Act, and Orders and Rules of Court, are added. This Chapter is by far the most important part of the Volume, and extends over 250 pages. The opportunity has been embraced for giving references to the former practice and procedure of the several Courts of Common Law and Equity, the Admiralty, Probate, and Matrimonial and Divorce Courts, with a view of indicating how far the procedure in these Courts has been altered; and the Author has not spared his criticism upon the Forms of Pleadings in Schedule C., by which, in fact, the whole method of procedure is changed.

The Sixth Chapter comprises Forms of Pleadings prepared by the Author in conformity with the provisions of the Judicature Acts, 1873 and 1875, and relate to transactions of every-day life. These Forms are entirely new, and the Author is alone responsible for them. It is in this Chapter, that the pleader will discover the old familiar terms of declaration, pleas, rejoinder, sur-rejoinder, rebutter, sur-rebutter, and such like terms to be wanting, and in their places, substituted,—statement of claim,



answer, reply, and joinder of issue. For although amendments are allowed, these amendments form part of the original pleading, so as to fall within one or other of the four last-mentioned and only pleadings allowed, without leave, under the Supreme Court of Judicature Acts, 1873 and 1875.

The Seventh Chapter contains additional Rules and Orders in Council of the 12th of August, and published in the *London Gazette* of the 24th of August, 1875. Orders I., II., III., and V. relate to the printing of Documents and Proceedings; Order IV., to a Special Case; and Order VI., contains the Schedule of Costs upon the Higher and Lower Scales. The Order respecting Costs is applicable to every Division of the Supreme Court, and should be carefully considered by the practitioner. The new Orders establishing District Registries are set out; and the contemplated new Rules respecting County Courts are referred to.

The Eighth Chapter is a Time Table of the principal steps in an action in the Supreme Court. It contains references to the Orders and Rules of Court which make provision for these matters, and will enable the practitioner to ascertain with ease, the period allowed for pleading, applications at Chambers and the Court, new trials and appeals, and the principal steps in an action from writ of summons to final judgment.

The Ninth Chapter contains a summary of the exclusive jurisdiction which belongs to some of the Divisional Courts. This was rendered necessary by the 34th section of the Judicature Act, 1873, which has expressly assigned to some of the Divisional Courts, the exclusive jurisdiction



which belonged to them during their independent existence. We have taken advantage to refer in this Chapter to some Statutes containing forms of procedure which are still to be used, notwithstanding the Judicature Acts.

The Tenth Chapter is a synopsis of the old practice of the Superior Courts of Common Law and Chancery. The Judicature Acts expressly reserve all the former methods of procedure, unless expressly abolished or inconsistent therewith; and the Statute Law Revision Act of 1875 leaves much of the old practice unrepealed.

An Index, which occupies a considerable space, and will form a connecting link between the old and new forms and methods of procedure, has been carefully prepared. The necessity for close attention to this subject, may be inferred from the fact, that there is no Index either to the provisions of the Judicature Acts, the Orders Rules and Forms annexed to the Act, or the additional Rules of Court which have since been issued. The Index will connect all these together, and supply a ready reference to the various provisions relating to the newly-constituted Supreme Court.

There are many defects and omissions; although the Volume has cost the Author much labour during the preceding two years and the loss of the present Long Vacation; but he will be amply rewarded if his labours should throw any light upon the new system, or in the slightest degree justify the title of the work—*The Law and Practice of the Supreme Court of Judicature.*







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# THE LAW AND PRACTICE OF THE SUPREME COURT OF JUDICATURE.

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## CHAPTER I.

### LEGAL AND CONSTITUTIONAL HISTORY.

*Common Law, Equity, and Statute Law, their Legal History—Britons, Romans, Saxons, Danes—Different Codes—Normans—Feudal System—Forest Laws—Separation of Lay and Ecclesiastical Courts—Aula Regia—Office of Lord Chancellor—Equitable Jurisdiction in Uses and Trusts, and other Questions—Conflicts between Law and Equity—Recent Attempts to give Common Law Powers to Courts of Equity, and Equitable Powers to Common Law Courts.*

THE most eminent lawyers and approved text-writers have classified the Laws of England under the two principal divisions of Common Law and Statute Law. The administration of these laws, for many centuries, has devolved upon the various Courts of the realm, some exercising a Legal, others an Equitable jurisdiction only, whilst both a Legal and Equitable jurisdiction have in some matters been confided to the same Court. As a necessary consequence of this divided and independent jurisdiction, the decisions of the Courts have often been conflicting—the Common Law judge adopting a rigorous construction of the law, whilst the Equity judge has sought to mitigate the severity of the law when applied to a particular case. Hence the lawyer has been not unfrequently puzzled, the practitioner thwarted, and the suitor left in a hopeless state of doubt, both as to the governing principle of law and the tribunal having the necessary powers of

Scientific  
division of  
English  
Laws.



redress. These anomalies would have been more glaring but for that august tribunal, the House of Lords and Final Court of Appeal, which has amongst its members the highest legal authorities both in Law and Equity, and who, when sitting together, have so blended their judicial power, that the principles of Common Law and Equity have been simultaneously applied, and stamped with an authority which the poorest as well as the wealthiest subject of the realm has learned to respect.

Another consequence of the divided jurisdiction of our Courts, has led some modern writers, losing sight of the technical division, to divide our laws into three branches—Common Law, Equity, and Statute Law. When, however, these expressions have been employed, it is clear that the phrase “Common Law” has been used in two completely different senses; if mentioned in contrast with the Statute Law it was intended to signify the *lex non scripta*, as distinguished from the *lex scripta*; but, when spoken of in contradistinction to Equity, it meant only that law and those doctrines which were administered and enforced in the Courts of Common Law, as distinguished from those of the Courts of Chancery.

Legal  
history.

It would be foreign to the purpose, and inconsistent with the size of this work, to define these anomalies very minutely, and scarcely less difficult to do so, especially as they almost all arose gradually, grew with the Constitution itself, and by degrees became engrafted into every branch of our judicature; but it will, nevertheless, assist us in tracing the growth of the independent and distinct legal systems which have existed so long in this country, and at the same time mark the advantages likely to accrue from recent legislation, if we give, however cursorily, a short summary of their legal history.

For this purpose it is unnecessary to consider the institutions of the Druids, and what laws (if any) existed among the ancient Britons, as it is doubtful whether they had made any progress towards civilization; but there is no doubt whatever that, as far as their laws were concerned, they were little, if at all, removed from utter



barbarism. When, however, the Romans succeeded in subjugating the whole country, they brought with them here, as to their other colonies, Roman law, together with Roman civilization; and when they finally departed, after an occupation of nearly four hundred years, the only laws known were those of ancient Rome. The Saxons, who next obtained predominance, were but a semi-civilized people, and their laws amounted to little more than a collection of customs; having, however, no code of their own to import, and their conquests being very gradual, they did not attempt to abolish the system they found, but simply grafted on to it some customs of their own, especially adding their peculiar custom of calling in the residents in the neighbourhood to decide disputes, which culminated after many centuries into our present trial by jury. As they became more settled and civilized, and especially as Christianity spread among them, many of their Kings issued codes of laws, some of which are extant now (a), and which appear to be a mixture of Roman laws, Saxon customs, and biblical injunctions. One object of many of these laws was to put an end to the custom of every man avenging his own injuries, by fixing a certain sum to be paid by the wrongdoer to the injured person or his relatives, and punishing them if they refused to accept such sum as full compensation, and in this respect the laws of Alfred are conspicuous. The inroads of the Danes made little difference, except to increase the general lawlessness of the times; when, however, the Danish monarchs were firmly settled on the throne, they issued laws of their own, which, however, differed very slightly from those of their Saxon predecessors, except in inflicting severe punishments for the murder of their countrymen; they did not, however, remain in power long enough to effect any perceptible alteration in the laws of the land, even if they had been so disposed.

At the time of the Norman Conquest there was a tolerably complete system of jurisprudence established, which,

(a) See *Leges Anglo-Saxonice* (Wilkins), 1721; and *Ancient Laws and Institutes of England*.



Norman  
Conquest.

though partly composed of the Codes of various Saxon monarchs, principally consisted of unwritten Customs, existing in no Code, to be found in no Law, and enunciated by no Legislator, but nevertheless universally looked upon as binding, acknowledged in every tribunal, and enforced by judicial authority. This system is the foundation of the Common Law of England, and so pertinaciously was it clung to by the people, that William the Conqueror thought it advisable to commence a Code of Laws issued by himself, by confirming the "*laws and customs*" of Edward the Confessor (*b*).

Feudal  
system.

The Normans did, however, introduce very great changes into the English laws, in more ways than one, and notably by introducing that gigantic product of the early ages, known as the Feudal System. It is impossible here to dilate upon the history and origin of this system, about which antiquarians and historians irreconcilably differ (*c*); for the purpose of this Work it is sufficient to say, that whatever germs of it may have existed in England in Anglo-Saxon times, it was practically unknown there till brought in by the Normans. The ruling principle of this system was the idea that the whole land belonged to the Monarch, who, retaining certain portions for his own use, parcelled out the remainder among his followers or vassals, claiming from them in exchange the performance of various duties, among which the most important was that of personally following their lord to battle when he went to fight his enemies, and bringing with them a specified number of duly armed retainers according to their rank, and the nature of their feu or feud, as their tenure was called. Each of these vassals was in the habit of parceling out his lands by a species of sub-infeudation, to followers of his own, who in their turn were bound to render service to their immediate lord, and follow him to battle. This system, which was in many instances carried out most tyrannically, was very repugnant to the people, and in an indirect manner made many alterations in the

(*b*) The Ancient Laws and Institutes of England, p. 201.

(*c*) For a sketch of some of these

different opinions, see Sullivan's Lecture on the Constitution and Laws of England, sect. 3.



former laws,—*inter alia*,—the feudal lord in many instances claimed the right of holding a Court of his own, which was conducted in a very different manner from the old manor Court, and in which the people had little or no power; the authority exercised by the lord being far greater than that of the officer who presided over the Saxon Court.

Norman  
Conquest.

There was another change made, which, though not necessarily a part of the feudal system, was almost invariably associated with it, and this was the introduction of severe forest laws. These laws, not only gave the King and the lords of the soil, exclusive power of sporting over lands which were then wild, to all intents and purposes, and punished trespassers in the most barbarous manner, but gave, or at any rate practically left the supreme Lord (i.e., the King) the power of making forests, a power often outrageously exercised by desolating villages, and even towns, in a wholesale way.

Forest  
laws.

Another, and a very important legal alteration made by the Conqueror, was the separation of the lay and ecclesiastical tribunals (*d*), this distinction, we think, was unknown to the Anglo-Saxons, in whose times offences of all descriptions were tried in one Court, the bishop sitting together with the secular judge (*e*), and doubtlessly taking the lead in spiritual cases, as his colleague would naturally do in temporal ones. A difference of opinion as to the origin of the distinction exists (*f*). We need not, however, trouble ourselves further upon that subject, or the religious or political effects of the alteration—how it gave rise to endless disputes between the barons and the bishops—between the Kings and the Popes—and how, at length, indirectly, it was one among the many causes which led to the Reformation. It is, however, very pertinent in this respect, that it shews how the people of England first became accustomed to the anomaly of two

Eccle-  
siastical  
and lay  
Courts.

(*d*) 3 Bla. Com. 61-64; Hale's Hist. Com. Law, chap. v.; Selden's Hist. Tythes; Selden's Notes on Eadmer, 167; Anct. Laws and Inst. England, 213

(*e*) Sharon Turner's Hist. Anglo-Saxons, ii. 261.

(*f*) See Finlason's notes to his edition of Reeves Hist. Eng. Law, pp. 99-102.



Courts, independent of each other, administering different laws, and being guided by totally distinct principles.

The Lay Courts administered the Common Law according to the established usages of the country, and adopted the Roman Law only when not inconsistent with it; whilst the Ecclesiastical Courts did not recognise the Common Law of England in any shape or way, and administered the Roman Law as modified by different Popes; that is to say, in every case not provided for by the law of the Church itself, the Roman Law was implicitly followed.

Aula  
Regia.

The Conqueror also established the *Aula Regia*, from which the Queen's Bench is supposed to have sprung; this Court was presided over by the chief officers of the kingdom, and followed the person of the King, which became so burdensome, that it was expressly provided in Magna Charta that the Common Pleas or Court for trying ordinary causes, should not follow the King's person, but be held in some fixed place. This place was established in Westminster Hall, where the other Courts were afterwards held. The three Courts of Queen's Bench, Common Pleas, and Exchequer were in practical existence, though not in their present forms, at a very early period of the Norman dominion, and though different causes were brought before them, they all administered the same system of jurisprudence, viz., the Common Law of England (g).

Office of  
Lord Chan-  
cellor.

The office of Chancellor, or Keeper of the Great Seal, is an extremely ancient one, and was known long before such a thing as equitable jurisdiction was even imagined. The Lord Chancellor, or Lord Keeper, as he was frequently then called, had the charge of the Great Seal, which the King affixed to all official documents, and was also supposed to be the keeper of the King's conscience; he always sat in the *Aula Regia*, and held high rank there; he also sat with the Justiciar and others in revenue matters (h), but in these tribunals he, like the other judges, merely administered the Common Law. One im-

(g) See chap. ii. post, p. 17.

(h) Madd. Ex. i. 61.



portant duty of the Chancellor, which was discharged by his clerks, was that of issuing writs for the suitors in the different Courts; these writs, which were necessary in every case, were originally provided for the most ordinary kinds of wrong, but as society advanced they were found insufficient, and by the Statute of Westminster the Second (13 Edw. 1, c. 24), it was enacted, "That whensoever it shall fortune in the Chancery that in one case a writ is found, and in like case falling under like law, and requiring like remedy, is found none, the clerks of the Chancery shall agree in making the writ, or the plaintiffs may adjourn it till the next Parliament, and let the case be written in which they cannot agree, and let them refer themselves unto the next Parliament, by consent of men learned in the law a writ shall be made, lest it might happen after that the Court should long time fail to minister justice unto complainants" (i). This statute, however, only gave the Chancery officers the power of framing new writs in "*consimili casu*" with those that formerly existed; but for cases that were entirely new, it was necessary to apply to Parliament (k). Notwithstanding this Statute, under which an immense number of writs were framed, there were continually complaints of wrongs for which no redress could be obtained in the ordinary Courts, and in these cases the injured parties very soon began to petition either Parliament or the King in Council; and as early as 1422 we find Parliament itself exercising the functions of a Court of Equity, by compelling William de la Pole, a feoffee to uses, to re-convey to Lord Clynton his estate (l). It appears that some of these applications which from their nature could not be conveniently investigated by the Parliament or the Council, were referred to the Chancellor, from which the habit sprung up of petitioning him. This seems to have been done more often after the check which was put on petitions to the Council by 25 Edw. 3, stat. 5, c. 4 (m). There is very considerable doubt when the Lord Chancellor began to decide cases.

(i) Stats. Realm.

(k) Stephen on Pleading, 7th ed. p. 8.

(l) R. P. 9 H. 5. Camp. Lives

Chan. i. 8.

(m) Reeves, Hist. Eng. Law, c. xiv.

Statute  
of West-  
minster.



Lord Chan-  
cellors.

Where the law could either do nothing, or else do what was positively unjust, there seems evidence of his having done so, at any rate in the reign of Richard II. (*n*); and there is no doubt of the power being exercised in the time of Henry VI., from the fact of a Statute having been then passed to restrain it within due bounds (*o*).

It must be remembered that at this time, all the Chancellors were, and ever had been, Ecclesiastics, as might be supposed from their being styled "keepers of the King's conscience," and there seems little doubt that from advising the King religiously, they had gradually come to exercise his authority in matters where the strict letter of the law was found opposed to the dictates of conscience or to natural justice. From the fact of these officers being Ecclesiastics, it was natural that they should not only have no affection for the Common Law of England, but that they should also have a very strong bias in favour of the Civil and Ecclesiastical Law. Here, again, we may trace the strange growth of two different systems of law in the same country; and it must be acknowledged there were not wanting reasons for making it both expedient and justifiable; there being no doubt that the Common Law, as administered by judges who clung most determinately to forms, was becoming more rigid and unyielding every day. We have not time to trace the disputes between Law and Equity which were both frequent and fierce, as each side was able severely to criticise the other. On the one hand, the iniquity often worked by the letter of the Law was patent; and, on the other, there was too much ground for the sarcasm of Selden, that the measure in Equity was the length of the Chancellor's foot (*p*). Improvements in this took place when it became usual to appoint lawyers to this office, which was not the case till the last few years of the sixteenth century, as before that time, with three exceptions, none but Ecclesiastics had filled the post (*q*).

Common  
Law and  
Equity.

(*n*) Reeves, Hist. Eng. Law, c. xvii.  
p. 188; Adams on Equity.  
(*o*) 15 Hen. VI. c. 4; R. P. 15  
Hen. VI. c. 25.

(*p*) Sel. Table Talk.  
(*q*) 3 Bla. Com. 53; Spel. Gloss.  
pp. 111, 112.



Besides merely correcting the abuses, and softening the asperities of the Common Law, Equity soon found employment in exercising jurisdictions which the Courts of Law persistently ignored; and first in importance among them came the doctrine of Uses and Trusts. Without going deeply into the history of Uses, which early sprang up owing to the desire of the Church to secure lands in her own hands, and of feudal tenants to secure the benefits without the burdens of their estates, and passing over the effect of the Statute of Uses (*r*), by which the Legislature strove to defeat such intentions, it is enough to say that for a long period, it has been customary for the legal estate in land and other property to be vested in certain persons now generally called trustees, while the beneficiary use of such property belongs to others; the Courts of Law, as before stated, always systematically ignored these Trusts, and, as far as they were concerned, the trustees were at perfect liberty to apply the property so held by them to their own use and benefit; but here the Court of Equity, or conscience, stepped in, and enforced the claim of the real or equitable owner of the estate. This alone was sufficient to build an impassable barrier between the Courts of Law and Equity, and they gradually became more and more distinct, and we soon begin to hear of conflicts between them. The way in which the Court of Equity (as embodied in the person of the Lord Chancellor) acted, was this, it did not profess of itself to interfere with the Courts of Common Law or their decisions, but restrained the suitors who had obtained a decision in their favour from acting on it, when it was unjust or against conscience. This, however, was not submitted to without a struggle on the part of the judges of the Common Law Courts, who regarded the Equitable Jurisdiction as an illegal interference with, and disobedience of, their own authority. These smouldering disputes came to a climax in the historical contest between Lord Chancellor Ellesmere, and Sir Edward Coke, L.C.J. of the King's Bench; the matter was referred to King James I., who decided in

Equitable  
Jurisdic-  
tion.Uses and  
trusts.

(*r*) 27 Hen. VIII. c. 10.



Equitable  
jurisdiction.

favour of the Court of Chancery (s), and from that time to the present the jurisdiction has never been seriously questioned.

With the successive appointments of lawyers to the office of Chancellor, the power of the Court became better known, the cases in which it would act were gradually fixed, and its rules defined.

Besides the general jurisdiction over Trusts of all sorts, Courts of Equity found means of enforcing many rights, by granting redress in many cases where either no remedy at all, or an incomplete one, could be found at Law. Hence it assumed authority over partners in settling their disputes, and making them account to each other; it also exercised its power over executors, and saw that legacies were paid to those entitled to them, and distinguished itself by compelling the performance of agreements, or restraining the committal of wrong, in cases where the only remedy at Law was an action for damages after the injury had been committed. It also exercised power in all cases of accident, mistake, or fraud, which power was often exclusive of, though sometimes concurrent with, that of the Common Law Courts. A conspicuous example of its jurisdiction was the manner in which the Courts of Equity granted relief in cases of penalties and forfeitures. We will not omit to mention how Equity also continually served the cause of justice, by affording means of discovery and of perpetuating testimony, long before any power of the kind existed at Common Law.

Conflict  
between  
Law and  
Equity.]

In this and other ways, as the power and practice of Equity became more and more defined, it drifted further and further from the Common Law, and our Courts presented this startling anomaly, that it became in many instances impossible for either tribunal to give complete satisfaction by its own procedure, and harassed suitors were driven from one to the other in a wild search after justice. Courts of Law were continually compelled to enforce a claim or admit a defence, they knew to be

(s) Parkes' Hist. Chan. p. 80; 1 Hallam, Const. Hist. chap. vi. 11th ed. pp. 344-349; 3rd Inst. c. 84, p. 125.



iniquitous, leaving the unjustly defeated suitor no other resource, than to rush to a Court of Equity, to restrain his adversary from reaping the fruits of his unrighteous success. Again, in proceedings in Courts of Equity, when the evidence was conflicting, the Chancellor was supposed to be purblind, and unable to decide on which side the truth lay, he therefore suspended his judgment, and directed an issue to be tried by the Courts of Common Law, to inform his mind of what was the truth. He was not only supposed to be unable to ascertain facts, but also to be incapable of forming an opinion on any point of Common Law, therefore if one arose, the practice was for him to submit a case for the opinion of the Common Law judges.

This was bad enough at any time, but became far worse when, from the increase of population and trade, the legal business of the country increased so immensely, that it became necessary to increase the number of puisne judges in all the Common Law Courts, while the Lord Chancellor, being utterly unable to get through the business of his Court, though assisted as of old by the Master of the Rolls, was aided by the appointment of Vice-Chancellors. Notwithstanding the complaints which had so long existed respecting this divided jurisdiction, scarcely any efforts were made to remedy it, till the reign of Her present Majesty, during which period not only have additional judges been appointed in all the Courts, and the Lord Chancellor assisted in his appellate duties by the appointment, in 1851, of the Lords Justices, but considerable pains have been taken to give each Court some of those useful powers which formerly pertained to the other alone. These attempts were however, as we shall see, of much less benefit than might have been expected, principally owing to the disinclination of the judges to exercise powers to which they were unaccustomed, and administer laws with which they did not feel themselves familiar.

Attempted  
improvements.

Among many others, all of which will more properly come under the next Chapter, we may here mention the



Legal  
powers  
given to  
Courts of  
Equity.

14 & 15 Vict. c. 83, s. 8, which enabled the Lord Chancellor to request any one of the Common Law judges to sit with him or in any branch of the Court of Chancery whenever desirable, and enacted that the Common Law judge might sit on such request "if he shall find it convenient to attend." As might have been imagined, the power conferred by this Statute has hardly ever been exercised. Again, Cairns' Act (*t*) gave the Court of Chancery, power in every case where it already was able to grant an Injunction against a breach of any agreement, or the committal of any wrongful act, or for the specific performance of any contract, to award damages to the party injured, either in addition to, or in substitution for, such Injunction, and the amount of these damages might be assessed either by the Court itself, or a jury summoned before it for that purpose. A few years later further power was given to the same Court by Rolt's Act (*u*), to decide for itself all questions of law or of fact, and to summon a jury to assist it whenever it chose. These Statutes cannot be said to have been altogether dead letters, but the power of summoning a jury is one which has been sparingly exercised by the Court, and the practice is said to be looked on with disapprobation by most of the Equity judges.

Equitable  
powers  
given to  
Courts of  
Common  
Law.

In addition to the powers conferred on the Courts of Equity, an attempt was made by the Common Law Procedure Act, 1854 (*x*), to confer certain equitable powers on the Common Law Courts; one of these powers was that of enabling parties to actions to plead equitable pleas (*y*), or, in other words, to set up any defence which would otherwise have been a defence in Equity only. This valuable provision was however frittered away, by the Common Law Courts holding that it only applied to cases in which a Court of Equity would grant an unconditional Injunction (*z*); this being once decided, equitable pleas became few and unimportant, and generally ineffective.

(*t*) 21 & 22 Vict. c. 27, post, p. 48.

(*u*) 25 & 26 Vict. c. 42.

(*x*) 17 & 18 Vict. c. 125.

(*y*) ss. 83-86; Nicoll v. Bell, 32

L. T. (N.S.) Q. B. 815.

(*z*) *Mines Royal Societies v. Magnay*,  
10 Ex. 489; *Phelps v. Prothero*,  
16 C. B. 370.



Another equitable power conferred by the same Act was that of granting Injunctions against the repetition of a breach of contract or other injury in cases where the injured party has the right of maintaining an action (a). This power, probably from the fact of its not being familiar to the judges, the officers of, and practitioners in, the Common Law Courts, has not been exercised often enough to have had any practical effect on legal proceedings.

These and many other instances in which both legal and equitable powers can be exercised in the same cause and by the same Court, will, however, come more properly under the next Chapter, where the concurrent jurisdiction of the Common Law and Equity Courts as existing at the time of passing the Judicature Act, 1873, will be more fully and separately treated of.

(a) ss. 79-82.



## CHAPTER II.

### LEGAL AND EQUITABLE JURISDICTION OF THE COURTS OF LAW AND EQUITY.

#### SECTION I.

*The House of Lords and the Judicial Committee of the Privy Council.*

*The Courts of the Lord Chancellor and the Lords Justices, Master of the Rolls, and the Vice-Chancellors.*

*The Courts of Queen's Bench, Common Pleas, and Exchequer, and the Exchequer Chamber.*

*The Admiralty, Probate, and Matrimonial and Divorce Courts.*

*The Bankruptcy Courts—The Courts Palatine—The Stannaries Court—The County Courts—Lord Mayor's and City of London Courts—Central Criminal Court . . . . . Pages 14-42*

#### SECTION II.

#### THE JURISDICTION OF THE COURTS IN RESPECT OF THE FOLLOWING SUBJECT-MATTERS :

*Arbitrations—Bills of Exchange—Cheques—Charitable Trusts—Coal Mines—Copyright—Corporations—Damages—Discovery—Ejectment—Equitable Pleading—Evidence—Forfeiture—Friendly Societies—Injunctions—Irrigation of Premises—Interpleader—Interrogatories—Issues—Joint-Stock Companies—Jury—Legitimacy—Mandamus—Merchandise Marks—Oral and Written Evidence—Patents—Penalties—Petition of Right—Principal and Agent—Promissory Notes—Railway and Canal Traffic—References—Replevin—Shipping—Title . . . . . Pages 42-81*

HAVING now traced the Legal History of England from the earliest times to the reign of our Queen, we propose, in the next place, to refer to the constitution of the several Courts existing at the time of the passing of the Judicature Acts, 1873 and 1875 ; and then to notice some of the questions, with regard to which these Courts have already exercised both a Legal and Equitable jurisdiction, indicating how far this jurisdiction has either been preserved, or not interfered with, by those Statutes.



## SECTION I.

## COURTS OF APPEAL.

THE House of Lords still trembles in the balance ; ignorance on the one side and prejudice on the other having prevailed, and induced the Legislature to leave for future consideration the Appellate Jurisdiction of this ancient and final Court of Appeal. For whilst the Supreme Court of Judicature Act, 1873, entirely abolished its jurisdiction (a), the Amendment Act of 1875 leaves the jurisdiction untouched for a period of twelve months (b). We need, therefore, only mention that its jurisdiction extends to all cases where an appeal lies from any of the Courts of Law and Equity having jurisdiction within the United Kingdom of Great Britain and Ireland.

House of Lords.

The jurisdiction, and even the very existence, of the Privy Council depends upon future legislation and the fate of the appellate jurisdiction of the House of Lords. The Supreme Court of Judicature Act, 1873 (c), deprived it of a portion of its authority, and gave power for an entire transfer of its jurisdiction (d) ; but the Amendment Act of 1875 contains provisions (e) which will have to receive further consideration from the Legislature, before the legal position and powers of the Judicial Committee of Her Majesty's Privy Council can be defined. At present it exercises jurisdiction in appeals from the Court of Admiralty, in questions of Lunacy, and is the final Court of Appeal in all cases whenever appeal lies from the Courts of the Indian Empire and the Colonial possessions of the Queen.

Privy Council.

## THE CHANCERY COURTS.

The Chancellor, who exercises the highest legal functions, and has a control over all the Courts of Equity, possesses also a personal jurisdiction in his official capacity, which is preserved to him by the Supreme Court of Judicature Act ; such as, for instance, his jurisdiction in relation to the custody of the persons and estates of idiots, lunatics,

Equity Courts.

(a) Sec. 20 ; post, cc. iv., v.

iv. p. 91.

(b) Sec. 2 ; post, chap. v.

(d) Sec. 21 and 55 ; post, chap. iv.

(c) ss. 18, 20, 21, 55 ; post, chap.

(e) Sec. 2 ; post, chap. v.



Chancery  
Courts.

and persons of unsound mind; the granting of patents; the issuing of commissions under the Great Seal; and as visitor of colleges and charitable institutions (*f*).

In his judicial capacity the Chancellor sits, either alone or with the Lords Justices (*g*), as a final Court of Appeal in all cases where an appeal lies either from the Chancery or Bankruptcy Courts, or the Courts Palatine (*h*); and this jurisdiction ceases with the Judicature Act, 1873 (*i*). The Lords Justices' powers and jurisdiction are co-extensive in certain questions with the Chancellor's (*k*). The Master of the Rolls has a concurrent jurisdiction in most questions with the Vice-Chancellors, and an exclusive jurisdiction in others (*l*), and he possesses a personal and almost uncontrolled jurisdiction which is attached to his official position; such, for instance, as the Keeper of the Records in London and elsewhere in England, which are preserved to him under the Judicature Act, 1873 (*m*).

The general jurisdiction of the Chancery Courts is of a mixed character, and the various modes in which the Court has hitherto exercised Common Law powers, will be found under the different subject-matters in this chapter (*n*). At the same time it must be remembered that this Court has a peculiar jurisdiction of its own, which is particularly preserved by the 34th section of the Judicature Act, 1873. The reader is referred to that section, for some of the matters which can be adjudicated on in this Court only, which includes all causes or matters then pending, and all causes and matters under any Act of Parliament by which exclusive jurisdiction has been given to this Court, as well as questions relating to trusts, partnerships, mortgages, specific performance of contracts, and administration of estates of deceased persons. It would not be within the scope of this Chapter further to enumerate them; it will be sufficient to specify them in a subsequent part of this work, and to refer to the standard works upon this subject (*o*); and, by way of further illustration,

(*f*) Sec. 17; and post, chap. iv.

(*g*) 14 & 15 Vict. c. 83, ss. 1, 11.

(*h*) See post, p. 27.

(*i*) Sec. 18; post, chap. iv. p. 91.

(*k*) 14 & 15 Vict. c. 83, ss. 5, 11.

(*l*) Stephen's Com. (4th ed.) vol. iii.

p. 409.

(*m*) Sec. 17, sub-s. 6; post, chap. iv.

(*n*) See post, pp. 42-81.

(*o*) Daniell's Ch. Practice; Smith's Manual of Equity; and post, pp. 42-81; and cc. iii., iv.



to instance some smaller questions, such as controlling grammar schools under 3 & 4 Vict c. 77, or apportioning money for the purpose of building churches under 8 & 9 Vict. c. 70, or directing the application of money under the Copyhold Enfranchisement Acts (*p*), in cases where different persons have only a limited interest in money. These questions, with some others, will have to be determined exclusively in the Chancery Division of the High Court of Justice, as constituted under the Judicature Act (*q*).

#### COMMON LAW COURTS.

In addition to the ordinary powers which these Courts share equally with the others, each Court has a peculiar jurisdiction of its own, which is carefully preserved to it by the 34th section of the Judicature Act, 1873, in accordance with which, the Queen's Bench Division, the Common Pleas Division, and the Exchequer Division of the High Court of Justice, will have assigned to them respectively all causes and matters which formerly pertained exclusively to the Court of Queen's Bench, the Court of Common Pleas, or the Court of Exchequer, as the case may be (*q*).

The Court of Queen's Bench was, and still remains, the Superior Criminal Court of the kingdom, and criminal proceedings can only be removed into it, from Inferior Courts. It is also the only Court in which either a criminal information for an offence, or a *quo warranto* to shew under what authority a person exercises an office, can be obtained. It also possesses the sole power to issue a prerogative writ of *mandamus*, commanding Inferior jurisdictions to do their duty, and this power is not interfered with in any manner by the action for *mandamus* created by the Common Law Procedure Act, 1854 (*r*).

There are other matters in which the Court of Common Pleas has a peculiar jurisdiction. Among these may be mentioned Dower, Freebench, or Quare Impedit (*s*), the only real actions which have not been abolished.

(*p*) 4 & 5 Vict. c. 35; 6 & 7 Vict. c. 23; 15 & 16 Vict. c. 21; 21 & 22 Vict. c. 94; 36 & 37 Vict. c. 66, s. 34. post, p. 71, chap. iv., pp. 91, 100, 105, 121.  
 (*q*) Post, chap. iv., p. 91. (*s*) 23 & 24 Vict. c. 126. s. 26; post, chap. iv., p. 91.  
 (*r*) 17 & 18 Vict. c. 125, s. 75;



This Court also alone decides registration cases on appeal from the decisions of revising barristers (*t*), and since 1868 the authority which the House of Commons itself used to exercise with respect to election petitions has been transferred to this Court (*u*).

**Exchequer.** The Court of Exchequer has also an exclusive jurisdiction in all revenue matters, and all disputes as to the payment of taxes and duties must therefore be settled here, and here alone. Up to 1841 this Court had also a jurisdiction in Equity; this jurisdiction has, however, been entirely taken from it by 5 Vict. c. 5, except so far as it might pertain to its authority as a Court of Revenue (*x*).

These three Courts all possess the power of issuing a prohibition to Inferior Courts if they exceed their jurisdiction, and appeals can be brought to any of them under certain circumstances from the decisions of County Court judges (*y*) or justices of the peace (*z*).

**Exchequer Chamber.**

The Court of Exchequer Chamber is entirely abolished by the Judicature Act (*a*), and its powers and jurisdiction transferred to the final Court of Appeal instituted by that Act, but a substituted and intermediate Court of Appeal is provided by the Amendment Act of 1875 (*b*). This ancient Chamber has usually sat in great state, ten judges often sitting together to decide questions, most of which were only of ordinary importance. The jurisdiction of the Court comprised appeals from each of the three Common Law Courts, and the Court was composed of the judges only of two of the Courts when hearing appeals from the Judgments of the third.

#### ADMIRALTY COURT.

**Admiralty Court.**

This ancient Court, which is now made by the Judicature Act (*c*) part of the High Court of Justice (*d*), and the appeal from which is now to the Court of Appeal constituted by that Act, and not the Privy Council (*e*), formerly

(*t*) 6 Vict. c. 18, s. 42.  
 (*u*) 31 & 32 Vict. c. 125; and post, pp. 91, 100, 105, 121.  
 (*x*) Att.-Gen. v. Halling, 15 M. & W. 687; and post, pp. 91, 100, 105, 121.  
 (*y*) 13 & 14 Vict. c. 61, s. 14; and post, p. 29.  
 (*z*) 20 & 21 Vict. c. 43, s. 2.

(*a*) Sec. 18, sub-sec. 4; and post, chap. iv., p. 91, 102.  
 (*b*) ss. 2, 4, 5; and post, chap. v., p. 159-162.  
 (*c*) 36 & 37 Vict. c. 66; post, p. 91.  
 (*d*) Sec. 16; post, p. 101.  
 (*e*) Sec. 18, sub-s. 5; but see 38 & 39 Vict. c. 77, ss. 4, 8; and post, p. 103, and chap. v., p. 157.



exercised a very extensive jurisdiction, both civil and criminal, some of which has been since taken from it. It has recently had further jurisdiction given to it in cases of salvage and wreck (*f*); and it was by the Admiralty Court Act, 1861 (*g*), constituted a Court of record for all intents and purposes, and endowed with the powers, in many instances, both of the Common Law Courts and of the Courts of Equity. Among other powers, and in addition to the ordinary means of discovery by interrogatories, inspection of documents, &c., the Court was also enabled, on the application of any party to a cause, to grant him or his witnesses inspection of any ship or other real or personal property, the inspection of which might be material to the issue of the cause.

Proceedings in this Court may be either *in rem* or *in personam*, but the latter mode of procedure has been obsolete for many years (*h*). In ordinary cases proceedings are taken by attaching the "*res*," i.e., the ship supposed to be in fault; which thus becomes the security for any damages to be recovered (*i*). In cases of collision the injured person has the option of seeking redress either in a Common Law Court or the Court-Admiralty; but where there are several claimants, the proceedings may be transferred from Common Law to Chancery (*k*); and in some cases these powers of the Court of Chancery may be exercised by the Admiralty Court (*l*).

The pleadings in this Court are regulated by the rules promulgated in 1859 (*m*), which direct that the first four pleadings shall be called "Petition," "Answer," "Reply," and "Rejoinder"; it is further ordered that the pleadings shall be divided into paragraphs and numbered, and shall contain brief statements of every fact relied on: and it seems, indeed, as if the pleadings directed by the Judicature Acts and the new Rules were intended to be framed on those in use in this Court.

The County Courts have now Admiralty jurisdiction in

(*f*) 3 & 4 Vict. c. 65; 9 & 10 Vict. c. 99.

(*g*) 24 & 25 Vict. c. 10.

(*h*) *The Clara*, Swa. 3.

(*i*) Lowndes' Admiralty Law, 191.

(*k*) 17 & 18 Vict. c. 104, s. 514.

(*l*) 24 & 25 Vict. c. 10, s. 13.

(*m*) Rules 65-77.



certain cases, which will be noticed when those Courts are referred to (*n*). It will also be observed, that the Judicature Acts, and several of the rules framed under them, refer to proceedings in Admiralty. It is however provided that all the old procedure is to remain, except where it is expressly altered by, or formed under and in accordance with, the provisions of those statutes (*o*).

#### PROBATE COURT.

Probate  
Court.

Down to the year 1857, the Probate of Wills and Administration of intestate's Estates pertained exclusively to the Ecclesiastical Courts; and this seems to have originated from ancient times, when the goods of an intestate vested in the hands of the bishop of the diocese for pious uses, in consequence of which it was thought fit that he should have an opportunity of deciding on the validity of the Will which took them from him, and gave them to persons designated by the deceased (*p*). Instead of the bishops adjudicating themselves, the practice had long sprung up of having all probate and administration suits decided in the Consistory Courts of the diocese or the Prerogative Court of Canterbury, as the case might be. Nevertheless this mode of adjudication gave great dissatisfaction; and in 1857, by 20 & 21 Vict. c. 79, subsequently amended by 21 & 22 Vict. c. 95, the Ecclesiastical jurisdiction in these matters was transferred to a new tribunal then established, and called the Court of Probate. This Court has now exclusive jurisdiction with regard to the facts whether a certain paper is a Will or not, whether it is properly attested, whether duly signed by the deceased, &c.; but does not attempt to interpret it, or interfere with the jurisdiction of other Courts as to the property affected by it. Though in most cases this Court follows the practice of the former Prerogative Court, there is one important difference: in the former Courts there was no power to summon a jury; in the Courts of

Modern  
jurisdic-  
tion.

(*n*) Post, pp. 37-41.

(*o*) 36 & 37 Vict. c. 66, ss. 68, 69,  
70, post, chap. iv.; 38 & 39 Vict. c. 77,

ss. 17, 18, 21; post, chap. v., p. 157.

(*p*) 3 Bla. Com. 96.



Probate a jury always *may* be summoned, if the Court chooses, to try any disputed questions of fact, and in many instances *must* be summoned on the application of the parties (*q*). This Court is now made a portion of the new High Court of Justice by the Judicature Act, 1873 (*r*); and the Act of 1875 gives some additional forms of pleading, but it is enacted that, except where expressly allowed, all the old rules shall remain in force (*s*).

Further particulars respecting this Court and its procedure will be found in Browne's Practice of the Court of Probate.

#### MATRIMONIAL AND DIVORCE COURT.

This is a modern Court, exercising a jurisdiction formerly unknown in this country. Down to the year 1857 every legal proceeding connected with marriage was vested in the Ecclesiastical Court, from the olden times when it was considered to appertain to the Church. This Court had the power of pronouncing a marriage null and void if contracted without the proper legal forms, or if entered into by persons unable to marry either on the grounds of consanguinity or affinity, or because one of them had a husband or wife living. The Court would also pronounce a divorce *à mensâ et thoro* in cases of misconduct or cruelty, which sentence freed the parties from the necessity of living together, but there was no means of completely annulling any marriage which had once been properly and formally celebrated; the reason of this, it is needless to say, originated in the times when this Court was really presided over by the bishop, and when marriage was considered a Sacrament, as it now is by the Roman Church and that section of the English Church which adheres to a rigid interpretation of her Articles. There were, however, such hardships connected with that state of the law, and the utter impossibility of dissolving a union, leaving (among other evils) the husband of a guilty wife exposed to the danger of having to maintain spurious issue, that

(*q*) 20 & 21 Vict. c. 77, ss. 35-39.

(*s*) 38 & 39 Vict. c. 77, ss. 18, 21;

(*r*) 36 & 37 Vict. c. 66, s. 16; post, chap. v., p. 157.  
post, chap. iv., p. 100.

Ancient  
jurisdiction.



the Legislature were in the constant habit of interfering and passing Acts of Parliament from time to time for the purpose of entirely dissolving a marriage, and leaving the parties free to marry again.

Modern  
jurisdic-  
tion.

Judicial  
separation.

Dissolution  
of mar-  
riage.

It would be foreign to the purpose of this work to state the manner in which these special Statutes were obtained, or all the circumstances under which they were granted, it is sufficient to say that the machinery was cumbrous in the extreme, and the necessary proceedings were both dilatory and excessively expensive. The practical result was, that divorces for sufficient cause could always be obtained by the wealthy, but by them alone. This was remedied in 1857 by the establishment of the Court for Divorce and Matrimonial Causes, commonly called the Divorce Court, which not only had all the powers of the old Ecclesiastical Court in matrimonial causes transferred to it, but had also the power which hitherto had only pertained to Parliament itself, of dissolving marriages under the same circumstances that Parliament was in the habit of dissolving them. The Court was established by 20 & 21 Vict. c. 85, and now exercises the powers conferred on it by that Statute and several amending ones (*t*). Its judges are the Lord Chancellor and all the Common Law Judges, together with the Judge of the Probate Court, who is the Judge Ordinary of the Court (*u*). It has the power of granting a judicial separation, which has all the effects of the old divorce *à mensâ et thoro*, on the grounds of either adultery, cruelty, or desertion for two years and upwards (*x*); it can also grant a dissolution of marriage to the husband on the ground of adultery alone, and to the wife on the ground of adultery coupled with either cruelty, desertion, or bigamy, or of incestuous adultery alone, incestuous adultery being defined to be adultery with a person with whom the husband, if his wife were dead, could not contract marriage on the ground of consanguinity or affinity (*y*). It has the further power, formerly

(*t*) 21 & 22 Vict. c. 108; 22 & 23 Vict. c. 61; 23 & 24 Vict. c. 144; 25 & 26 Vict. c. 81; 29 & 30 Vict. c. 32; 31 & 32 Vict. c. 77; 36 & 37 Vict. c. 31.

(*u*) 20 & 21 Vict. c. 85, s. 8; 22 & 23 Vict. c. 61, s. 1.

(*x*) 20 & 21 Vict. c. 85, s. 16.

(*y*) 20 & 21 Vict. c. 85, s. 27.



pertaining to the old Ecclesiastical Courts, of making a decree for the restitution of conjugal rights (z), or of declaring a marriage to be altogether null and void (a) on the grounds either that the parties were incapable of marrying, or that the formalities necessary to constitute marriage had not been complied with.

The powers and procedure of this Court seem to have been taken both from the Courts of Law and of Equity. In evidence, the rules of Common Law are to be followed (b), but the evidence itself may be taken either *vivâ voce* or, in some cases, by affidavit (c). The trials of matters of fact may take place before the Court itself either with or without the assistance of a jury (d), or an issue may be directed to be tried at the assizes (e). It is enacted that all decrees and orders of the Court are to be enforced in the same manner as the judgments, orders, and decrees of the Court of Chancery (f). It has the power of directing alimony to be paid to the wife both *pendente lite* (g), and after a decree (h), it can also give directions for the maintenance and care of the children (i), and can reform marriage settlements for the benefit of the innocent party, and the children of the marriage (k)—a power never possessed by any other Court; this, however, can only be done when there are children living at the date of the decree (l).

This Court has also a peculiar jurisdiction, which will come under another head (m), of declaring persons to be legitimate, or natural born subjects of the realm.

Though it will be seen in the next chapter that this Court is made by the Judicature Acts a part of the High Court of Justice, it will be observed there are no new rules or forms issued respecting it, consequently the old ones will remain unaltered (n).

- (z) 20 & 21 Vict. c. 85, s. 17.
- (a) 20 & 21 Vict. c. 85, s. 6.
- (b) 20 & 21 Vict. c. 85, s. 48.
- (c) 20 & 21 Vict. c. 85, s. 46.
- (d) 20 & 21 Vict. c. 85, ss. 28, 36  
-38.
- (e) 20 & 21 Vict. c. 85, s. 40.
- (f) 20 & 21 Vict. c. 85, s. 52.
- (g) 20 & 21 Vict. c. 85, s. 24.
- (h) 20 & 21 Vict. c. 85, s. 32; 29  
& 30 Vict. c. 32, s. 1.

- (i) 20 & 21 Vict. c. 85, s. 35.
- (k) 20 & 21 Vict. c. 85, s. 45; 22  
& 23 Vict. c. 61, s. 5.
- (l) *Corrance v. Corrance*, L. R. 1  
P. & D. 495; *Graham v. Graham*,  
*ibid.* 711.
- (m) See *Legitimacy*, post, p. 67.
- (n) 36 & 37 Vict. c. 66, ss. 5, 68-  
70; post, chap. iv., p. 91; 38 & 39  
Vict. c. 77, ss. 17, 18, 21; post,  
chap. v., p. 171-174.



## BANKRUPTCY COURT.

Bank-  
ruptcy  
Court.

There probably never was a Court which had such an extensive jurisdiction of all sorts, and possessed such varied powers, as the Court of Bankruptcy now exercises (o). Debtors originally were practically treated as criminals, but as it was very manifest that, whatever might be the case with private individuals; it must continually happen that traders would be unable to pay their debts without any fault of their own, our Legislature, at a very early period, began to pass Acts of Parliament for their relief. It would be tedious to enumerate the various Statutes of this description passed from time to time; it is sufficient to say that the same principle pervaded one and all of them, viz., that while penalties were inflicted for dishonest practices or reckless trading, the honest debtor should escape further punishment on giving up all his property for the benefit of his creditors. It was a long time before this privilege was extended to non-traders; they continued liable, if unable to pay, to imprisonment for debt, which might last for their lives, at the instance of any disappointed and vindictive creditor. The injustice, however, of punishing the debtor, in many instances more severely than the thief, was too apparent to continue, and from time to time, Acts were passed for the relief of Insolvent Debtors, though on terms not so favourable as those granted to bankrupt traders. The principle of leniency to debtors continued to be carried out to a greater extent than ever, and indeed, as many think, in a manner which was quite unjust to the creditor; the Bankruptcy Act, 1861 (p), introduced by the late Lord Westbury when Attorney-General, being conspicuous in this respect, and containing, among other provisions, one (now taken away) by which every insolvent could make himself bankrupt.

By the present Bankruptcy Act of 1869 (q), supple-

(o) 32 & 33 Vict. c. 71, s. 65.

(p) 24 & 25 Vict. c. 134.

(q) 32 & 33 Vict. c. 71; see also

32 & 33 Vict. c. 83, repealing previous legislation on the subject.



mented by the Debtors Act (r) of the same year, imprisonment for debt merely, is abolished, and there is no practical difference in the proceedings in the case of traders and non-traders.

One great peculiarity in the present Act is the very extensive jurisdiction given to the Court for the purpose of determining almost every question, whether of a legal or equitable character, that can possibly arise during the course of a bankruptcy. The 72nd section enacts that the Court "shall have full power to decide all questions " of priorities, and all other questions whatsoever, whether " of law or fact, arising in any case of bankruptcy coming " within the cognizance of such Court, or which the Court " may deem it expedient or necessary to decide for the " purpose of doing complete justice, or making a complete " disposition of property in any such case; and no such " Court as aforesaid shall be subject to be restrained in the " execution of its powers under this Act by the order of any " other Court, nor shall any appeal lie from its decisions, " except in the manner directed by this Act." The section goes on to enact that if any question of fact arises, which any of the parties wish to be tried before a jury, or which the Court thinks ought to be tried in such a manner, a jury may be summoned, and the trial held before the Court itself, in the same manner as before any of the superior Courts of Common Law.

The effect of this section is to give the Court of Bankruptcy, power to decide any legal question which may arise in the course of distributing the effects of bankrupts, and for that purpose to try any action which would otherwise have come properly before the ordinary Common Law Courts. The Courts of Equity have also more than once decided that, though this section does not oust their jurisdiction, they will not exercise it, except in cases where the Court of Bankruptcy is unable to give adequate relief (s). The only limitation to this jurisdiction seems to be, that it has been held that the section does not apply to a case

(r) 32 & 33 Vict. c. 62.

(s) *Stone v. Thomas*, L. R. 5 Ch. 219.



where a trustee in bankruptcy has a claim against a third person in respect of the bankrupt's estate (*t*).

The Court  
may re-  
strain pro-  
ceedings  
against the  
bankrupt.

The Court of Bankruptcy has also, by the 13th section, the power, at any time after the presentation of a bankruptcy petition, to restrain any legal proceedings whatever against the debtor, whether by action, suit, execution, or any other process; or it may, in its discretion, allow such proceedings to continue.

Discovery.

The powers of the Court with regard to discovery are also extremely large, as by the 96th section it may "summon before it the bankrupt, or his wife, or any person whatever, known or suspected to have in his possession any of the estate or effects belonging to the bankrupt, or supposed to be indebted to the bankrupt, or any person whom the Court may deem capable of giving information respecting the bankrupt, his trade dealings or property; and the Court may require any such person to produce any documents in his custody or power relating to the bankrupt, his dealings, or property." The section concludes by enacting that any person so summoned is liable to be apprehended if he refuses to attend on being tendered his reasonable expenses; and by the 97th section and 49th rule, the Court may take any evidence whatever, either *vivá voce*, or by written interrogatories, or by commission abroad.

County  
Court.

By the 59th section it is enacted that in all cases where the bankrupt does not reside within the London Bankruptcy District, the proceedings shall take place in the County Court of the district in which he resides, as will be found when the jurisdiction of those Courts is treated of (*u*).

The London Court of Bankruptcy was to have formed a part of the Supreme Court of Judicature (*x*), but by the Amendment Act of 1875 the Court is to be preserved as an independent tribunal, and all the clauses of the 1873 Act are repealed (*y*).

(*t*) *Ellis v. Silber*, L. R. 8 Ch. 83;  
see also *Maule v. Davis*, L. R. 9 Ch.  
192.

(*u*) *Post*, p. 36.

(*x*) 36 & 37 Vict. c. 66, ss. 3, 16;  
*post*, p. 93.

(*y*) 38 & 39 Vict. c. 77, ss. 9, 33;  
*post*, chap. v., p. 157.



## PALATINE COURTS.

We find in Blackstone (z) that Chester and Durham Palatine Courts were counties palatine by immemorial prescription, and that Lancashire was created one, by Edward III. These counties have in consequence enjoyed various privileges and separate legal establishments, and though most of the privileges and independent powers inconsistent with those of royalty have been from time to time abolished, the legal ones have remained, recognised by, and provided for by, the Legislature. The legal jurisdiction of the Court of Session in Chester was abolished by 11 Geo. 4, and 1 Will. 4, c. 70, since which time that county has been subjected to the jurisdiction of the Courts at Westminster. The palatine jurisdictions of Durham and Lancashire have continued to the present time, though we shall see in a subsequent chapter how they have been affected by the Judicature Acts (a).

These counties have always had both law and equity administered in their palatine Courts. The provisions of the Common Law Procedure Acts, 1852 (b), 1854 (c), and 1860 (d), were applied to the Court of Pleas of Durham and the Court of Common Pleas at Lancaster, and the procedure of those Courts has been further regulated by 32 & 33 Vict. c. 32. The Palatine Chancery Courts are now chiefly regulated by 21 & 22 Vict. c. 27, and 25 & 26 Vict. c. 42, and their Equity jurisdiction will remain to a certain extent unaltered (e).

## STANNARIES COURT.

From a very early period there has been a peculiar Stannaries Court jurisdiction affecting the mineral mines of Devonshire and Cornwall, administered by a tribunal called the Stannaries

(z) 1 Bla. Com. 116; see also 1 Broom & Had. 138; 1 Step. Com. 7th ed. p. 129; 3 ib. 347; for an account of the origin of the privileges and jurisdiction of these counties.

(a) 36 & 37 Vict. c. 66, ss. 34, 77, 78; post, chap. iv., pp. 121, 145; 38 & 39 Vict. c. 77, s. 27; post, chap. v.,

p. 157.

(b) 15 & 16 Vict. c. 76, ss. 229-234.

(c) 17 & 18 Vict. c. 125, s. 100.

(d) 23 & 24 Vict. c. 126, ss. 40, 41.

(e) See 36 & 37 Vict. c. 66, s. 17; post, chap. iv., p. 101.



Stannaries  
Court.

Court, and this Court is still in existence, exercising various legal and equitable powers (*f*). The statutes now in force regulating this tribunal are 16 Ch. 1, c. 15; 4 & 5 Will. 4, c. 42; 6 & 7 Will. 4, c. 106; 2 & 3 Vict. c. 58; 18 & 19 Vict. c. 32; 32 & 33 Vict. c. 19. It is presided over by a judge called a Vice-Warden, and has both a Common Law and Equity side.

Cost-Book.

The Common Law side of the Court has a general jurisdiction in suits between *miners*, while the Equity side can entertain suits relative to the *mines* themselves (*g*). In all actions for debt or damages under £50, the action is to be prosecuted in a summary manner by way of plaint, and tried before a jury consisting of five jurors (*h*). As well as other equitable jurisdictions, it has one in interpleader (*i*). It not only has jurisdiction over all mines conducted on what is called the "Cost-Book Principle," but none can be legally conducted on that principle except those which are situated within the jurisdiction of this Court. This jurisdiction has been carefully preserved in many statutes; in matters of Common Law it still exists concurrent with the Superior Courts of Common Law and of the Equity Courts (*j*); and in Equity, respecting some questions, it is exclusive both of the Chancery and County Courts. By the 6th section of 28 & 29 Vict. c. 99 (the statute conferring an equitable jurisdiction on the County Courts), it is expressly provided that "Nothing in this Act contained shall be construed to impair the jurisdiction of the Stannaries Court, or to give authority to any County Court judge to entertain jurisdiction in any case to which the equitable jurisdiction of the said Court at present extends."

Companies  
Acts.

The Companies Act, 1862 (25 & 26 Vict. c. 89), and the Amendment Act of 1867, also expressly saves the jurisdiction of this ancient Court, and the effect of sections 68, 81, 83, 108, 116, and 172 of the Act of 1862, together

(*f*) For the ancient history of the Stannaries and this Court, see Rogers on Mines, 2nd ed. chap. xviii.

(*g*) Rogers on Mines, Jurisdiction

of Stannaries, 2nd ed. chap. xviii.

(*h*) 18 & 19 Vict. c. 32, s. 16.

(*i*) 18 & 19 Vict. c. 32, s. 11.

(*j*) 9 & 10 Vict. c. 95, s. 141.



with the 25th section of 32 & 33 Vict. c. 19, is that every mining company within the jurisdiction of this Court shall be wound up subject to its jurisdiction alone, unless the Vice-Warden shall certify that in his opinion it can be more satisfactorily wound up in the Court of Chancery.

This Court is not made part of the High Court of Justice established under the Judicature Act (*k*), and will continue to have an independent existence; but the Court of Appeal established by the Judicature Act is to exercise all the appellate jurisdiction now vested in the Court of the Lord Warden of the Stannaries (*l*) and of the Court of Chancery (*m*).

#### COUNTY COURTS.

The greatest legal innovation in modern times, is unquestionably the institution of County Courts in 1847, and there is little doubt that they have done more than anything else to pave the way for the Judicature Acts. At the time when these Courts were first established, there had been for many years, great and well deserved complaints of the system by which justice was administered, especially in the case of small claims. It was especially so, before the passing of the Common Law Procedure Acts of 1852 and 1854, when the law abounded in useless technicalities, which if they did not altogether obstruct the course of justice, always impeded it, and added considerably to the necessary expenses. This was felt by all suitors, but, of course, it was especially hard on the poorer ones, whose claims were generally very small, and who found, if they succeeded, that the extra expenses more than swallowed up the fruits of their verdict, while if they failed, those costs, in addition to losing their cause, frequently caused their ruin. Even without the expense, the delays of the Superior Courts were fatal to such suitors. The old local Courts had become obsolete, or else their forms were too cumbrous to afford any relief, and the idea was started of bringing cheap and quick

(*k*) 36 & 37 Vict. c. 66, s. 16.

(*l*) 36 & 37 Vict. c. 66, s. 18, sub-s. 3, p. 102.

(*m*) 38 & 39 Vict. c. 77, s. 15; Rogers on Mines, 2nd ed. chap. xviii.; post, pp. 91, 157.



justice home to the poor, by establishing special tribunals for the trial of small causes.

This was the comparatively humble origin of those Courts which afterwards came to have the most varied and extensive jurisdiction known in this country, being now able, under certain circumstances, to try cases not only in Common Law and Equity, but also in Bankruptcy, Probate, and Admiralty.

Early  
County  
Court Acts.

It is interesting to notice the way in which these Courts commenced, with their powers most carefully circumscribed by the Legislature, and then to watch how these powers were gradually increased, and the jurisdiction of the Courts themselves from time to time enlarged. The first County Court Act, and the foundation of the present system, the greater part of which is unrepealed to the present day, is the 9 & 10 Vict. c. 95, which established the Courts, and gave them their first and their Common Law jurisdiction, and in discussing these Courts it will be found convenient to treat their different jurisdictions *seriatim*, commencing with that in Common Law.

Common  
Law.

The first County Court Act, passed in 1846, enacted that the whole country, with the exception of the City of London, should be divided into districts, which was done by Order in Council in 1847, and the first judges were appointed in the same year by the Lord Chancellor. The Court was intended for the recovery of small debts, and actions for small wrongs, and with the exception of power to give landlords possession of small tenements, was confined to these claims, its jurisdiction being limited to personal actions in which the debt or damage claimed was not more than £20, with the provision that if such actions were brought in any of the Superior Courts, and less than £20 recovered in an action of contract, or £5 in one of tort, the plaintiff should not be entitled to any costs. It was also enacted that the Court should not have cognizance of any action of ejectment, or in which the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise, should be in question, or in which the validity of any



devise, bequest, or limitation under any will or settlement should be disputed, nor for any malicious prosecution, or for any libel or slander, or for criminal conversation, or for seduction or breach of promise of marriage. It would be impossible here to trace the gradual means by which that jurisdiction has been extended at the present time (*n*).

It is sufficient, with regard to the Common Law jurisdiction existing now, to say that all actions whatever may be tried in the County Court where both parties consent, and without such consent all personal actions may be tried there, where the debt, damage, or demand does not exceed £50, except actions for breach of promise of marriage, malicious prosecution, libel, slander, and seduction (*o*), with the proviso that in any action commenced after the 20th of August, 1867, in the Superior Courts, if the plaintiff does not recover a sum exceeding £20 in actions of contract, or £10 in actions of tort, he shall not recover any costs at all unless the judge or Court consider there were sufficient reasons for bringing the action there (*p*). In all actions of contract where the sum claimed is under £50, but exceeds £20, the Superior Courts and the County Court have concurrent jurisdiction, but it is open to the defendant in such cases to apply to a judge at Chambers for a summons for the plaintiff to shew cause why the action should not be tried in the County Court, and unless good cause be shewn to the contrary, the judge will order such action to be tried there (*q*). It has already been mentioned that actions for malicious prosecution, libel, slander, or seduction, cannot be tried in the County Court, but if the defendant in any of these actions, or in one for false imprisonment, illegal arrest, illegal distress, assault, or other tort, make an affidavit that, should a verdict be found for him, the plaintiff has no visible means of paying his costs, any judge of the Court in which such

What actions can now be tried in the County Court.

(*n*) See statutes 11 & 12 Vict. c. 43; 12 & 13 Vict. c. 101; 13 & 14 Vict. c. 21; 15 & 16 Vict. c. 54; 19 & 20 Vict. c. 108; 21 & 22 Vict. c. 74; 28 & 29 Vict. c. 99; 29 & 30 Vict. c. 14; 30 & 31 Vict. c. 142.

(*o*) 9 & 10 Vict. c. 95, s. 58; 13 &

14 Vict. c. 61, s. 1.

(*p*) 30 & 31 Vict. c. 142, s. 5; 36 & 37 Vict. c. 66, s. 67; and post, chap. iv.

(*q*) 30 & 31 Vict. c. 142, s. 7; and note (*p*).



action is brought shall have power to order that, unless the plaintiff give security for costs, or satisfy him that the action is fit to be brought in the Superior Court, all proceedings shall be stayed, or that the cause be remitted to the County Court (*r*). In this case it will be seen that the County Court can try actions in which it has no original jurisdiction.

Ejectment,  
&c.

The Court has also power now to try an action of ejectment (*s*), or any other action in which the title to any corporeal or incorporeal hereditament comes in question, where neither the value of the lands, tenements, or hereditaments, nor the rent payable in respect thereof, exceeds £20 per annum, though the defendant may cause such action to be remitted to the Superior Court by shewing that the title to lands, &c., of a greater value than £20 would be affected by the decision (*t*).

The Court has also summary powers in cases of interpleader (*u*), and in enabling landlords to recover possession of small tenements (*x*). There is one exception to the general powers of the County Court, viz., that under no circumstances can an action be brought in it on a judgment recovered in a Superior Court (*y*); and for further details the reader is referred to Davis' County Court Practice.

Equitable  
jurisdiction.

It has already been stated that the County Courts at first were almost exclusively Courts of Common Law, though they were from the beginning able to enforce any demand not exceeding £20 (afterwards extended to £50), being the whole or part of the balance of a partnership account, or share under an intestacy, or legacy under a will (*z*). From time to time equitable jurisdiction was given, in cases where small amounts were in dispute, by the Charitable Trusts Acts (*a*), and various Acts respecting literary and scientific institutions (*b*), together with friendly (*c*) and industrial and provident societies (*d*).

(*r*) 30 & 31 Vict. c. 142, s. 10; 36 & 37 Vict. c. 66, s. 67; post, chap. iv.

(*s*) 30 & 31 Vict. c. 142, s. 11.

(*t*) 30 & 31 Vict. c. 142, s. 12.

(*u*) 30 & 31 Vict. c. 142, s. 31; see Interpleader, post, p. 61.

(*x*) 19 & 20 Vict. c. 108, ss. 50–53.

(*y*) 19 Vict. c. 108, s. 27.

(*z*) 9 & 10 Vict. c. 95, s. 65.

(*a*) Post, p. 45.

(*b*) 17 & 18 Vict. c. 112, s. 29.

(*c*) 18 & 19 Vict. c. 63, s. 13; post, p. 58.

(*d*) 25 & 26 Vict. c. 87, s. 17; post, p. 59.



Notwithstanding these and a few other exceptions to the general rule, these tribunals might fairly have been called <sup>Equitable powers.</sup> Common Law Courts till 1865, when, for the first time, a large Equity jurisdiction was conferred upon them. The Statute creating this addition to their powers was the 28 & 29 Vict. c. 99, the first section of which enacts that—

“ The County Courts held by virtue of an Act passed in  
 “ the session of Parliament holden in the ninth and tenth  
 “ years of the reign of Her Majesty, chapter ninety-five,  
 “ shall have and exercise all the power and authority of  
 “ the High Court of Chancery in the suits or matters  
 “ hereinafter mentioned ; that is to say,

“ 1. In all suits by creditors, legatees (whether specific,  
 “ pecuniary, or residuary), devisees (whether in  
 “ trust or otherwise), heirs at law, or next of  
 “ kin, in which the personal or real or personal  
 “ and real estate against or for an account or  
 “ administration of which the demand may be  
 “ made shall not exceed in amount or value the  
 “ sum of five hundred pounds :

“ 2. In all suits for the execution of trusts in which  
 “ the trust estate or fund shall not exceed in  
 “ amount or value the sum of five hundred  
 “ pounds :

“ 3. In all suits for foreclosure or redemption, or for  
 “ enforcing any charge or lien, where the mort-  
 “ gage, charge, or lien shall not exceed in  
 “ amount the sum of five hundred pounds :

“ 4. In all suits for specific performance (e), or for the  
 “ delivering up or cancelling any agreement for  
 “ the sale or purchase of any property, where

(e) By the accidental omission of the word “ of,” jurisdiction was here given in suits for specific performance whatever the amount in dispute, but by 30 & 31 Vict. c. 142, this clause has been repealed, and the 9th section of that Act gives jurisdiction to the County Court—“ in all suits for specific performance of, or for the

“ reforming, delivering up, or cancel-  
 “ ling of any agreement for the sale,  
 “ purchase, or lease of any property  
 “ where, in the case of a sale or pur-  
 “ chase, the purchase-money, or in  
 “ case of a lease the value, of the pro-  
 “ perty shall not exceed five hundred  
 “ pounds.”



Equitable  
powers.

- “ the purchase money shall not exceed the sum  
 “ of five hundred pounds :  
 “ 5. In all proceedings under the Trustees Relief Acts,  
 “ or under the Trustee Acts, or under any of  
 “ such Acts, in which the trust estate or fund  
 “ to which the proceeding relates shall not  
 “ exceed in amount or value the sum of five  
 “ hundred pounds :  
 “ 6. In all proceedings relating to the maintenance or  
 “ advancement of infants in which the property  
 “ of the infant shall not exceed in amount or  
 “ value the sum of five hundred pounds :  
 “ 7. In all suits for the dissolution or winding-up of  
 “ any partnership in which the whole property,  
 “ stock, and credits of such partnership shall  
 “ not exceed in amount or value the sum of five  
 “ hundred pounds :  
 “ 8. In all proceedings for orders in the nature of injunc-  
 “ tions, where the same are requisite for grant-  
 “ ing relief in any matter in which jurisdiction  
 “ is given by this Act to the County Court, or for  
 “ stay of proceedings at law to recover any debt  
 “ provable under a decree for the administration  
 “ of an estate made by the Court to which the  
 “ application for the order to stay proceedings is  
 “ made.”

Legal and  
equitable  
jurisdic-  
tion.

It will be observed here how much more extensive is the Equity than the Common Law jurisdiction of these Courts, for whereas in Common Law cases £50 is the limit of their power, it is in Equity cases extended to the amount of £500. There is also another difference, and an important one, viz., that in Common Law their jurisdiction is in many cases exclusive, to this extent, that plaintiffs suing in the Superior Courts, though successful, are deprived of their costs, whereas in Equity the jurisdiction here given is not exclusive of, but concurrent with, that of the Court of Chancery. If, however, the Court should be of opinion that the conduct of the plaintiff has been vexatious in not proceeding in the County Court, it can and



will punish him for so doing, by only allowing him County Court costs (*f*); but this is a power which will not usually be exercised merely because the plaintiff chooses to exercise a choice which the Legislature has expressly left him in Equity cases, while depriving him of it in Common Law ones (*g*). This statute (*h*), which has conferred Equitable jurisdiction on the County Courts in so many instances, has carefully prevented its having any in the Stannaries Court (*i*), by enacting, in the 6th section, that "Nothing in this Act contained shall be construed to impair the jurisdiction of the Stannaries Court, or to give authority to any County Court judge to entertain jurisdiction in any case to which the Equitable jurisdiction of the said Court at present extends."

Besides the Statute above cited, giving them general Equitable jurisdiction, the County Courts have had various other Equitable powers conferred on them in particular cases by different Acts of Parliament. For instance, the Partition Act, 1868 (*k*), which regulates the manner in Suits for  
partition. which property is to be divided among the persons entitled to it, enacts, in the 12th section, that "In England the County Courts shall have and exercise the like power and authority as the Court of Chancery in suits for partition (including the power and authority conferred by this Act), in any case where the property to which the suit relates, does not exceed in value the sum of five hundred pounds, and the same shall be had and exercised in like manner, and subject to the like provisions as the power and authority conferred by section 1 of the County Courts Act, 1865" (*l*).

Again, the Married Women's Property Act, 1870 (*m*), Married  
woman's  
property. which enables married women in certain cases to hold property as if they were single, enacts, in the 9th section, that "In any question between a husband and wife as to property declared by the Act to be separate property,

(*f*) *Simons v. McAdam*, L. R. 6 Eq. 324. 27; *Rogers on Mines*, 2nd ed. chap. xviii.

(*g*) *Brown v. Rye*, L. R. 17 Eq. 343.

(*h*) 28 & 29 Vict. c. 99.

(*i*) See *Stannaries Court*, ante, p.

(*k*) 31 & 32 Vict. c. 40.

(*l*) Ante, p. 33.

(*m*) 33 & 34 Vict. c. 93.



either party may apply either to the Court of Chancery, or (irrespective of the value of the property) to the County Court of the district in which either party resides, and the judge may, if either party require him to do so, hear the application in his private room. Either party may appeal in the same manner as in any other Equitable plaint."

The County Court has also Equitable jurisdiction in certain cases respecting the winding-up of joint stock companies, which will come more properly under that head (*n*).

Appeal and  
transfer.

If during the progress of a suit it appears that the subject-matter thereof exceeds the amount to which the jurisdiction of the Court is limited, it is the duty of the Court to order it to be transferred to the Court of Chancery (*o*).

It is also noticeable that while the Equitable jurisdiction of these Courts is, as has been already shewn, so much larger than their Common Law one, the power of appeal conferred by the Act is absolute, and without reference to the amount in dispute (*p*): and it is also enacted by the 3rd section that "Any one of the Vice-Chancellors, on the application at Chambers of any party to any suit or matter pending under this Act, shall have power, then and there, or, if he shall think fit, after hearing a summons served upon the other party or parties, to transfer the same to the Court of Chancery, upon such terms, if any, as to security for costs or otherwise, as he may think fit." A power which is usually exercised in cases of any importance, or in which any doubtful or difficult points of law are likely to arise.

Bank-  
ruptcy.

Another very important jurisdiction of the County Courts, and one which they have possessed under different Statutes (*q*) almost from the time they were instituted, is that in Bankruptcy. Their present powers are regulated by the Bankruptcy Act, 1869 (*r*), the 59th section of which directs that in all cases in which the bankrupt does not reside within the London Bankruptcy District (as therein

(*n*) See Joint Stock Companies, post, p. 65.

(*o*) 28 & 29 Vict. c. 99, s. 9.

(*p*) 28 & 29 Vict. c. 99, s. 18.

(*q*) See 10 & 11 Vict. c. 102; 24 & 25 Vict. c. 134.

(*r*) 32 & 33 Vict. c. 71; ante, p. 26.



defined), the local Bankruptcy Court in which the proceedings shall be held, shall be the County Court of the district in which he resides.

The 66th section confers on the judge of the Local Court the same powers as the judge of the Court of Bankruptcy itself has, but by the 71st section there is in every case an appeal to the Chief Judge in Bankruptcy.

The County Court possesses a similar jurisdiction to that of the Court of Probate (s) with regard to granting or revoking the grant of probate or letters of administration, in all cases where the deceased, at the time of his death, had his fixed place of abode in certain specified districts (t), and at the time of his death did not possess personal estate of the value of £200, *and* was not entitled to any real estate to the value of £300 or upwards (u). In calculating these respective values, the measure is the amount of property actually in the possession of the deceased, and no deduction can be made for any debts due, which are to be paid out of the personal estate (x), or any charge by way of mortgage or otherwise on the real estate, though such debts or charges may reduce them far below the £200 and £300 specified (y). In this case the jurisdiction is strictly concurrent, as it is expressly enacted that in all cases every one may apply to the Court of Probate in the first instance, and not to the County Court; though in any case within the jurisdiction of the County Court the Probate judge has the power of remitting proceedings there (z), and in all cases there is an appeal to the Probate Court (a).

It would seem that under some provisions of the Merchant Shipping Act, 1854 (b), as amended by the Merchant Shipping Act Amendment Act, 1862 (c), the County Court had certain jurisdiction given to it in salvage cases, but its powers in this respect are now regulated by the Statutes

(s) 20 & 21 Vict. c. 77; 21 & 22 Vict. c. 95; ante, p. 20.

(t) These districts are specified in Schedule A. to 20 & 21 Vict. c. 77.

(u) 21 & 22 Vict. c. 95, s. 10.

(x) 21 & 22 Vict. c. 95, s. 10.

(y) *Davis v. Brecknell*, L. R. 2

P. & M. 177.

(z) 20 & 21 Vict. c. 77, s. 59; 21 & 22 Vict. c. 95, s. 12.

(a) 20 & 21 Vict. c. 77, s. 58.

(b) 17 & 18 Vict. c. 104, ss. 458, 459, 460, 461.

(c) 25 & 26 Vict. c. 63, s. 49.



Admiralty  
jurisdic-  
tion.

which have conferred Admiralty jurisdiction on it, viz., 31 & 32 Vict. c. 71 and 32 & 33 Vict. c. 51 (*d*). By the former of these two Statutes, called the County Courts Admiralty Jurisdiction Act, 1868, after enacting that if it appear desirable that any County Court should have Admiralty jurisdiction, it should be lawful for Her Majesty in Council to assign to it any district (whether within its ordinary jurisdiction or not) as an Admiralty district, it was enacted in the 3rd section that—

“ Any County Court having Admiralty jurisdiction shall  
“ have jurisdiction, and all powers and authorities relating  
“ thereto, to try and determine, subject and according to  
“ the provisions of this Act, the following causes (in this  
“ Act referred to as Admiralty causes):—

“ (1.) As to any claim for salvage—Any cause in which  
“ the value of the property saved does not ex-  
“ ceed one thousand pounds, or in which the  
“ amount claimed does not exceed three hun-  
“ dred pounds:

“ (2.) As to any claim for towage, necessaries, or wages  
“ —Any cause in which the amount claimed  
“ does not exceed one hundred and fifty  
“ pounds:

“ (3.) As to any claim for damage to cargo, or damage  
“ by collision—Any cause in which the amount  
“ claimed does not exceed three hundred  
“ pounds (*e*):

“ (4.) Any cause in respect of any such claim or claims  
“ as aforesaid, but in which the value of the  
“ property saved or the amount claimed is be-  
“ yond the amount limited as above mentioned,  
“ when the parties agree by a memorandum  
“ signed by them or by their attorneys or  
“ agents that any County Court having Admi-  
“ ralty jurisdiction, and specified in the memo-  
“ randum, shall have jurisdiction.”

(*d*) See ante, pp. 19, 20.

(*e*) By 32 & 33 Vict. c. 51, s. 4,  
this provision is extended “ to all  
“ claims for damage done to ships

“ whether by collision or otherwise,  
“ when the amount claimed does not  
“ exceed three hundred pounds.”



It is provided that the County Court judge in these cases may be assisted by two nautical (*f*) or mercantile (*g*) assessors; also that if it appears that the subject-matter exceeds the limit of the County Court jurisdiction, it is to be transferred to the High Court of Admiralty (*h*). Provisions are also made for transferring a cause from one County Court to another (*i*), and power is given to the High Court of Admiralty to transfer any cause from a County Court to itself, if it shall think fit, on such terms as it may choose to impose (*k*).

Having given these powers of removing causes, the Act in sect. 9 proceeds to restrain persons from proceeding without leave in the Admiralty Court in any case in which the County Court has jurisdiction, by enacting that "If any person shall take in the High Court of Admiralty of England or in any Superior Court, proceedings which he might, without agreement, have taken in a County Court, except by order of the judge of the High Court of Admiralty or of such Superior Court or of a County Court having Admiralty jurisdiction, and shall not recover a sum exceeding the amount to which the jurisdiction of the County Court in that Admiralty cause is limited by this Act, and also if any person without agreement shall, except by order as aforesaid, take proceedings as to salvage in the High Court of Admiralty or in any Superior Court in respect of property saved, the value of which when saved does not exceed one thousand pounds, he shall not be entitled to costs, and shall be liable to be condemned in costs, unless the judge of the High Court of Admiralty or of a Superior Court before whom the cause is tried or heard shall certify that it was a proper Admiralty cause to be tried in the High Court of Admiralty of England or in a Superior Court."

The jurisdiction conferred by this Statute does not, however, extend to any prize cause, or anything to do with the

(*f*) 31 & 32 Vict. c. 71, ss. 11, 14, ante, p. 18.  
15, 16.

(*g*) 32 & 33 Vict. c. 51, s. 5.

(*h*) 31 & 32 Vict. c. 71, s. 7; and

(*i*) 31 & 32 Vict. c. 71, s. 8.

(*k*) 31 & 32 Vict. c. 71, ss. 6, 8.



Admiralty  
jurisdiction.

suppression of slavery, or any Appellate Admiralty jurisdiction (*l*); while in every case whatever an appeal lies from the County Court to the High Court of Admiralty (*m*).

Additional  
powers.

The powers conferred by this Act have been extended by 32 & 33 Vict. c. 51, sect. 2 of which provides that—

“ Any County Court appointed or to be appointed to  
“ have Admiralty jurisdiction shall have jurisdiction, and  
“ all powers and authorities relating thereto, to try and  
“ determine the following causes :

“ (1.) As to any claim arising out of any agreement  
“ made in relation to the use or hire of any  
“ ship, or in relation to the carriage of goods  
“ in any ship, and also as to any claim in tort  
“ in respect of goods carried in any ship, pro-  
“ vided the amount claimed does not exceed  
“ three hundred pounds :

“ (2.) As to any cause in respect of any such claim or  
“ claims as aforesaid, but in which the amount  
“ claimed is beyond the amount limited as  
“ above mentioned, when the parties agree, by  
“ a memorandum signed by them or by their  
“ attorneys or agents, that any County Court  
“ having Admiralty jurisdiction, and specified  
“ in the memorandum, shall have jurisdiction.”

Charter-  
party.

With respect to the words used in the first sub-section of the above section, “ any claim arising out of any agreement made in relation to the use or hire of a ship, or in relation to the carriage of any goods in any ship,” a somewhat curious question has arisen, viz., whether they include an action on a charterparty. There is no doubt whatever that the words are sufficiently large in themselves, but it was contended that it had been enacted that the Statute containing them is to be read as one with the “ County Courts Admiralty Jurisdiction Act, 1868 ” (*n*), which shewed that the Act could not confer upon the County Court a jurisdiction which confessedly did not belong to the Admiralty itself. It was also argued that

(*l*) Sec. 4.

(*m*) Sec. 26.

(*n*) 32 & 33 Vict. c. 51, s. 1.



as in all Admiralty cases an appeal lay from the County Court to the High Court of Admiralty, it could never have been intended to give that Court an Appellate jurisdiction in cases in which it did not have an original one. This view was taken by the Court of Common Pleas in *Simpson v. Blues* (o), and followed by Sir R. Phillimore, though against his own opinion, in *The Hewsons* (p). When, however, that case was taken up to the Privy Council, that tribunal, after careful consideration, differed from the judges of the Common Pleas and reversed Sir R. Phillimore's formal decision (q), deciding in accordance with his opinion, and delivering the judgment he would have done, had he not thought himself bound by *Simpson v. Blues* (r). It only remains to add that, in Admiralty cases, the County Court, like the Court of Admiralty, may exercise its jurisdiction either by proceedings *in rem* or *in personam* (s).

The "Agricultural Holdings Act, 1875," has also conferred upon these Courts a mixed jurisdiction respecting some of the provisions of that Statute (38 & 39 Vict. c. 92).

Agricultural holdings.

We have now briefly shewn the different jurisdictions exercised by the County Court, but it must be remembered that this Court is not a homogeneous tribunal like the High Court of Justice appointed under the Judicature Acts will be. It is true that the judge of a County Court sits one day as a Common Law judge, and on another day, as a judge in Equity and Bankruptcy; but his powers in each capacity were till recently quite distinct; and while he was sitting he was unable in certain cases to administer law and Equity simultaneously; and if a suitor had misconceived his remedy, the judge could only decide against him. Indeed, so far was this carried, that for more than two years after Equitable powers were conferred on these Courts, though a judge could when sitting in Equity restrain an action at Law, he could not listen to an Equitable defence set up in a Common Law case in his own Court. Equitable defences, though legal in the Superior Courts

How the different powers are exercised.

(o) L. R. 7 C. P. 290.

(p) L. R. 3 A. & E. 568.

(q) *The Hewsons*, L. R. 5 P. C. 141.

(r) *Supra*.

(s) 32 & 33 Vict. c. 51, s. 3; and

ante, p. 19.



since 1854, have only been allowed in the County Courts since the 18th of November, 1867, when they were authorized by an Order in Council extending some of the provisions of the Common Law Procedure Act, 1854 (*t*).

Lord  
Mayor's  
and City of  
London  
Courts.

It should be noticed that the alterations in the Law made by the Judicature Acts extend to the County Courts (*u*), as well as the Lord Mayor's Court and City of London Court, so that the judges of those Courts respectively will now exercise additional legal and equitable powers concurrently.

### CENTRAL CRIMINAL COURT (*v*).

## SECTION II.

Concurrent  
Jurisdic-  
tion in Law  
and Equity.

THE subject-matters (*w*), with regard to which the various Courts already referred to, exercise both a Common Law and Equitable jurisdiction, are so numerous and varied that it is scarcely possible to arrange them chronologically, or, indeed, to find any natural order in which to place them, and it has therefore been thought most convenient for the reader, to refer to them in alphabetical form. This summary (*w*) will, it is hoped, prove useful both to the student of history and the legal practitioner, and also serve as a guide to the construction which the Supreme Court will be likely to put upon many doubtful points of Law and Equity which will arise when considered conjointly and with reference to the distinct principles which had been previously maintained by the Courts of Law and Equity during their independent existence.

ARBITRATION. *See* REFERENCES, POST, P. 78.

### BILLS OF EXCHANGE—CHEQUES.

Bills and  
notes.

Bills of Exchange, Promissory Notes, and Cheques are so universal and necessary in all commercial countries, that it is not surprising there has been a great deal of legislation about them. These instruments have been the subject

(*t*) 17 & 18 Vict. c. 125, s. 105. (v) See post, pp. 84, 101, 118, 125,  
(u) 36 & 37 Vict. c. 66, ss. 89-91; 129, 140, 153; 38 & 39 Vict. c. 77,  
38 & 39 Vict. c. 77; post, pp. 152, s. 23, post, chap. v. p. 177.  
157. (w) See ante, p. 14.



of many decisions, both in the Common Law and in the Equity Courts. If the acceptor of a bill or maker of a note, or any other party liable on the instrument, should not pay it at maturity, the remedy of the holder is at Law; if, however, there be reasons why the holder is not entitled to recover, a Court of Equity will, and always would, restrain him from maintaining his action. This was formerly the only remedy, but since the Common Law Procedure Act, 1854 (*x*), there are now many instances in which the defendant can set up his case at Law by means of an Equitable plea. Thus, it was held that when one of the joint and several makers of a promissory note was, to the knowledge of the payee, only surety for the other, he was discharged by time being given to the principal without his consent, and was entitled to judgment, on pleading an Equitable plea to this effect (*y*). Again, there are many cases where the holder or payee of a bill or note is not entitled to recover either at Law or in Equity, but where, nevertheless, the instrument is perfectly valid in the hands of an innocent holder or third party, for value without notice. Here a Court of Equity will generally interfere to restrain the instrument from being negotiated, and order it to be given up.

Though the decisions are by no means uniform, it seems to have been at last well settled that there was no remedy whatever at Law if any negotiable instrument was lost (*z*). Here Equity was in the constant habit of intervening, and would enable the unfortunate loser of the document to recover its value on giving a satisfactory indemnity to the person who paid him (*a*). A legal remedy is now provided by the 87th section of the Act above mentioned, where it is enacted that when an action is brought on a bill of exchange or other negotiable instrument which has been lost, the Court or a judge may order that such loss shall not be set up provided an indemnity is given to the satisfaction of the Court or judge against the claims of any other person on such instrument.

(*x*) 17 & 18 Vict. c. 125, s. 83.

(*y*) *Greenough v. McClelland*, 2 E. & E. 424.

(*z*) *Hansard v. Robinson*, 7 B. & C. 90; *King v. Zimmerman*, L. R. 6 C. P.

466; *Byles on Bills*, 11th ed., 372–9.

(*a*) *Story*, Eq. Jur. 85; *Snell's Principles of Equity*, 2nd ed. p. 350  
*Byles on Bills*, *supra*.

Lost bill  
or note.

Equitable  
plea.



Summary  
procedure  
on bills and  
notes.

Among the most useful modern legislation on bills and notes is the Summary Procedure on Bills of Exchange Act (b). It is well known that in the great majority of actions on bills and notes there is no defence of any kind, and though defendants continually put in an appearance and pleaded, in order to gain time, yet they were in the constant habit, after putting the plaintiff to the trouble and expense of a trial, of offering no evidence whatever. This can now be no longer done, as the Act provides that in all actions brought on bills and notes within six months after they are due, and having a special writ of summons provided for the purpose, the plaintiff may, on filing an affidavit of personal service of the writ, obtain final judgment, unless the defendant obtains leave to appear within twelve days. This enactment, while most beneficial to plaintiffs, works no injustice on defendants, as it is provided that they may obtain leave to appear and defend the action by either paying into Court the sum indorsed on the writ, or by any affidavit disclosing either a legal or equitable defence, or such facts as would render it incumbent on the plaintiff to prove consideration, or any other facts which the judge may deem sufficient to support the application. This provision has always been interpreted by the judges and the Courts in the most liberal manner, and according to the intention of the Act, which is, not to shut out any possible defence, but to prevent expense and delay when there is none; leave is, consequently, always granted to appear if the defendant can so much as shew plausible grounds for suspecting there may be a defence (c), and it does not signify whether the defence is meritorious or not (d).

Order in  
Council.

In conformity with power given by the 10th section, this Act has, by an Order in Council of the 30th of January, 1856, been extended to the County Courts, and it has been held that the jurisdiction of the County Courts in such cases applies to any sum, however small, and is not confined to sums between £20 and £50, as was once

(b) 18 & 19 Vict. c. 67.

(c) *Clay v. Turley*, 27 L. J. Ex. 2;  
*Mathews v. Marsland*, *ibid.* 148; *Pre-*

*bout v. Stevens*, 30 L. J. Ex. 1.

(d) *Casella v. Darton*, L. R. 8 C. P. 100.



supposed (*e*), though, of course, when the amount is over £20, the Superior Courts have concurrent jurisdiction (*f*).

Cheques on bankers have been held to be within this Cheques. Act (*g*), and in most instances come within the general law as to bills and notes, a cheque being really an inland bill of exchange payable to bearer or order on demand (*h*). The only effect modern legislation has had upon these instruments has been allowing them to be made to order as well as to bearer, and, in imposing a stamp on them, removing many restrictions under which they laboured when unstamped (*i*). Since then it is clear that a cheque payable to order (*k*) may be post-dated, and probable that one payable to bearer (*l*) may be so also. It was for a long time the custom of bankers never to pay a crossed cheque except through a banker, and by the 18 & 19 Vict. c. 25, such payment was made invalid, and now by 21 & 22 Vict. c. 79, if it be crossed either by the drawer or any holder with the name of any particular banker, the payment can only be made through that banker, and any obliteration or alteration of the crossing is made felony; it is, however, provided that a banker is free from liability if, without negligence, he pays a cheque the crossing of which has been obliterated.

#### CHARITABLE TRUSTS.

It is scarcely necessary to observe that Charitable Trusts, in common with trusts of all descriptions, fall primarily within the jurisdiction of the Courts of Equity (*m*), and these Courts have always taken particular pains to see that such trusts are properly administered. Owing, however, to the great difference between ancient and modern times, there are several old trusts which are either utterly inapplicable to the present day, or which

(*e*) *Holborow v. Jones*, L. R. 4 C. P. 14.

(*f*) *Ante*, p. 31.

(*g*) *Eyre v. Waller*, 5 H. & N. 460.

(*h*) *Byles on Bills*, 11th ed. p. 13; see *Keane v. Beard*, 8 C. B. N.S. 372.

(*i*) 16 & 17 Vict. c. 59, s. 19; 33

& 34 Vict. cc. 97, 99.

(*k*) *Whistler v. Forster*, 14 C. B. N.S. 248.

(*l*) *Austin v. Bunyard*, 34 L. J. Q.B. 217.

(*m*) *Ante*, p. 16.



Charitable trusts.

are being administered in a manner totally different to that which would have been wished by those who created them. To remedy this, a board has been appointed, called the "Charity Commissioners for England and Wales." These commissioners now act under various Statutes commonly called the Charitable Trusts Acts (*n*), and have very extensive powers conferred on them, both for the purpose of examining into the state of any charities falling within their jurisdiction, and of authorizing improvements or alterations in carrying out their objects. Though the commissioners have very extensive powers given them over charitable trustees, they have none whatever over those who claim adversely to such trustees, nor have they any judicial powers strictly so called, or jurisdiction in any contentious business more fitted to be transacted by a legal tribunal. The Court of Chancery will exercise such jurisdiction when the revenues of the charity exceed £50 a year; but when they are not over that sum, the County Court for the district will have the power (*o*).

#### COAL MINES.

Coal mines. Coal mines are so general in this country, and of such immense importance; that there have been from time to time laws and regulations made affecting them. These laws have been consolidated, and the mines are now regulated by 35 & 36 Vict. c. 96, which prohibits the employment of females and young children entirely, and regulates the hours of work and education of boys. It also makes many arrangements for the safety of the mines, and puts them altogether under the authority of a secretary of state. Among other provisions, the 20th section of the Act directs that every mine shall have at least two shafts or outlets, and enacts that if any mine be worked in violation of such provision, such working may be stopped by injunction by any of the superior Courts of

(*n*) 16 & 17 Vict. c. 137; 18 & 19 Vict. c. 124; 23 & 24 Vict. c. 136; 25 & 26 Vict. c. 112; 32 & 33 Vict. c. 110.

(*o*) 16 & 17 Vict. c. 137, ss. 32, 33; 23 & 24 Vict. c. 136, s. 11; 32 & 33 Vict. c. 71, s. 30; see also Steph. Com. 7th ed. vol. iii. p. 75; and ante, p. 32.



Law or Equity, on the application of the Attorney-General, and such costs may be awarded as the Court thinks just (*p*).

## COPYRIGHT.

Copyright may be defined as the exclusive right of Copyright. multiplying copies of any literary work, and it has long been disputed whether or not such a right existed at Common Law. For all that can be said on this subject, we can only refer our readers to the well-known cases of *Millar v. Taylor* (*q*) and *Jefferys v. Boosey* (*r*). It is, however, now quite clear that, whether there ever were such a Common Law right or not, the only copyright now existing is that created by Statute, and the Statute now in force is the 5 & 6 Vict. c. 45, which was mainly passed through the efforts of the late Mr. Justice Talfourd. The usual remedies for an infringement of a copyright were an action at Law to recover any damages sustained, or an application to a Court of Equity to restrain the publication. Though Equity invariably granted an injunction when the case was clear, yet, if there was any doubt about the plaintiff's title, it refused the injunction till the plaintiff had established his right at Law; but now, by Rolt's Act (*s*), the Court may decide every doubtful case of law or fact for itself. It is also competent for the Courts of Common Law, when trying an action for damages for the infringement of a copyright, to grant an injunction against the repetition of such infringement (*t*).

Recently, copyright has been much extended with Copyright regard to designs and works of art, and in one of the <sup>in works of art.</sup> recent Statutes on this subject it is expressly enacted that, if an action for infringement be brought in any of the superior Common Law Courts, it shall be lawful for such Court to make any order for an injunction, inspection, or account (*u*), these being ordinary Equitable powers.

(*p*) Ante, p. 13; Rogers on Mines, 2nd ed., chaps. xxix., xxx., xxxi.

(*q*) 4 Burr. 2303.

(*r*) 4 H. L. Cas. 815.

(*s*) 25 & 26 Vict. c. 42, s. 1; ante,

p. 12.

(*t*) 17 & 18 Vict. c. 125, ss. 79-82; ante, p. 13.

(*u*) 25 & 26 Vict. c. 68, s. 9.



## CORPORATIONS.

Under the head of Discovery (x) it will be seen that Corporations can now be ordered to make discovery of documents or answer interrogatories under the Common Law Procedure Act, 1854.

## DAMAGES.

**Damages.** Till the year 1858 it was always considered that the right of awarding and assessing damages was the peculiar attribute of the Courts of Common Law, and that though Equity could compel the performance, or restrain the breach of a contract, and in some cases prevent the committal of a wrongful act, yet, if any damages had resulted therefrom, compensation must be obtained in a Court of Law, and there only. This was first altered by Lord Cairns' Act (y) (21 & 22 Vict. c. 27), where it was enacted that, "in all cases in which the Court of Chancery has jurisdiction to entertain an application for an injunction against a breach of any covenant, contract, or agreement, or against the commission or continuance of any wrongful act, or for the specific performance of any covenant, contract, or agreement, it shall be lawful for the same Court, if it shall think fit, to award damages to the party injured, either in addition to or in substitution for such injunction or specific performance, and such damages may be assessed in such manner as the Court shall direct."

How the  
damages  
are to be  
assessed

In order to ascertain the amount of these damages, the Court may either order them to be assessed by a Court of Common Law, in the same way issues used to be directed to be tried, or they may be assessed by the Court itself, either with or without the assistance of a common or special jury.

The Court is never bound to award damages, and it is always discretionary whether it will do so or leave the plaintiff to bring his action at law (z); this Act, however,

(x) Post, p. 49.

(y) Ante, p. 12.

(z) Durell v. Pritchard, L. R. 1 Ch. 244.



in enabling the Court to award damages, whenever it can grant an injunction, &c., does not increase its jurisdiction; consequently, in all cases in which it has no power to grant an injunction, or a decree for specific performance, it is equally powerless to award damages (a). The Court will also refuse relief in any case where a bill is filed for damages only, and leave the plaintiff to his remedy at Law, considering this Act was intended to give additional power in Equitable cases, and not merely to transfer actions for damages from the Common Law Courts (b).

#### DISCOVERY.

There is probably no power so conducive to the course of justice as that of Discovery, or the means by which a litigant is enabled to obtain from the other side the information which he requires in support of his own case. The mode in which this right is granted may be divided into three heads; the first, usually called Discovery, is the right of ascertaining whether a litigant has in his possession or control any and what documents useful to his opponent; the second, Inspection, is the right given of seeing these documents, if they exist; the third is the right of administering Interrogatories, or written questions to be answered on oath.

I. Discovery: However necessary it might have been for a litigant to find out whether or not his opponent was possessed of documents necessary for proving his own case, he had no means of obtaining the information before 1854, except by the tedious and expensive operation of going to the Court of Chancery and filing a bill of discovery. It is now, however, enacted in the 50th section of the Common Law Procedure Act, 1854 (c), that “upon the application  
“ of either party to any cause or other civil proceeding in  
“ any of the Superior Courts, upon an affidavit by such  
“ party of his belief that any document, to the production  
“ of which he is entitled for the purpose of discovery or

(a) *Rogers v. Challis*, 27 Beav. 175; 392; *Cooke v. Forbes*, L. R. 5 Eq. 166.  
*Betts v. Gallais*, L. R. 10 Eq. 392.

(b) *Betts v. Gallais*, L. R. 10 Eq. (c) 17 & 18 Vict. c. 125.



Discovery. “ otherwise, is in the possession or power of the opposite  
 “ party, it shall be lawful for the Court or judge to order  
 “ that the party against whom such application is made,  
 “ or if such party is a body corporate, that some officer to  
 “ be named of such body corporate shall answer on  
 “ affidavit, stating what documents he or they has or have  
 “ in his or their possession or power relating to the  
 “ matters in dispute, or what he knows as to the custody  
 “ they or any of them are in, and whether he or they  
 “ objects or object (and, if so, on what grounds) to the  
 “ production of such as are in his or their possession or  
 “ power, and upon such affidavit being made, the Court or  
 “ judge may make such further order thereon as shall be  
 “ just.”

As a general rule, this order will only be made where it is likely that it may be followed by an order for the inspection of the documents, the existence and locality of which have thus been made known (*d*), and it will not be made unless the party applying for it can shew that his adversary is in possession of, at any rate, some one document to the possession of which he is entitled (*e*).

Inspection. II. The right to Inspection is a different one from that of Discovery; it is not the power of ascertaining whether the adversary has any particular document in his custody or power, but (that being already ascertained) the right of compelling him to allow his opponent to see it, and to take a copy if he desires. It would seem that this power was always possessed by the Courts at Common Law, and was exercised by them in many cases; for instance, where there was no counterpart of the document, so that the party holding the original was considered as trustee for both (*f*); but unless the holder was a party, or identical with a party to the action, and unless he could be looked on as a trustee for the person wanting inspection, it would not be granted (*g*).

(*d*) *Morgan v. Morgan*, Day's Com. Law Proc. Act, 4th ed. p. 296.

(*e*) *Evans v. Louis*, L. R. 1 C. P. 658.

(*f*) *Devenoge v. Bouverie*, 8 Bing.

1; *Doe d. Morris v. Roe*, 1 M. & W. 207.

(*g*) *Street v. Brown*, 6 Taunt. 302; *Ratcliffe v. Bleasby*, 3 Bing. 148.



This Common Law power was extended by the 6th <sup>Inspection.</sup> section of 14 & 15 Vict. c. 99, which enacted that any of the Superior Courts, or a judge thereof, might, on application being made by either of the litigants, “compel the  
“ opposite party to allow the party making the application  
“ to inspect all documents in the custody or under the  
“ control of such opposite party relating to such action  
“ or other legal proceeding, and, if necessary, to take  
“ examined copies of the same, or to procure the same to  
“ be duly stamped, in all cases in which, previous to the  
“ passing of this Act, a discovery might have been obtained  
“ by filing a bill, or by any other proceeding in a Court of  
“ Equity at the instance of the party so making applica-  
“ tion as aforesaid.”

Since this enactment, summonses to inspect have been very numerous, and it is difficult to lay down any exact rule as to the precise circumstances under which leave will either be granted or refused, though there is an increasing tendency on the part of the Courts to permit inspection when necessary. The party applying for it must shew that an action is pending, that there is a *prima facie* case that the documents are in the possession or under the control of the opposite party, and that they relate to such action (*h*); he must also shew that the documents he requires to inspect are necessary for the support of his own case, and not merely for enabling him to rebut that of his adversary (*i*), though if they are necessary for his own case, inspection will not be refused merely on the ground that they also go to make out the case of the other side (*k*).

III. The power to administer Interrogatories was also <sup>Interroga-</sup> bestowed on the Common Law Courts by the Common <sup>tories.</sup> Law Procedure Act, 1854, the 51st section of which enacts that, “in all causes in any of the Superior Courts,  
“ by order of the Court or a judge, the plaintiff may with  
“ the declaration, and the defendant may with the plea, or

(*h*) *Hurst v. Hewitt*, 7 Ex. 236; 811; *London Gas Light Co. v. Chelsea Vestry*, 6 C. B. N.S. 411; *Riccard v. Inclosure Commissioners*, 4 E. & B. 329.  
(*i*) *Wright v. Morrey*, 11 Ex. 209.  
(*k*) *Coster v. Baring*, 2 C. L. R.



Interrogatories.

“ either of them by leave of the Court or a judge, may at  
 “ any other time deliver to the opposite party or his  
 “ attorney (provided such party, if not a body corporate,  
 “ would be liable to be called and examined as a witness  
 “ upon such matter), interrogatories in writing upon any  
 “ matter as to which discovery may be sought, and require  
 “ such party, or in the case of a body corporate, any of  
 “ the officers of such body corporate, within ten days to  
 “ answer the questions in writing by affidavit, to be sworn  
 “ and filed in the ordinary way; and any party or officer  
 “ omitting, without just cause, sufficiently to answer all  
 “ questions as to which a discovery may be sought, within  
 “ the above time, or such extended time as the Court or a  
 “ judge shall allow, shall be deemed to have committed a  
 “ contempt of the Court, and shall be liable to be proceeded  
 “ against accordingly.”

This very useful power has been continually exercised with great benefit to suitors, and many have been the decisions as to what interrogatories will and what will not be allowed. To a certain extent the same principles are applied with regard to interrogatories and to the inspection of documents. Thus interrogatories must be relevant to the plaintiff's case (*l*), and not apply to the other side exclusively (*m*).

There are certain rules which have been held to apply to discovery by any means whatever; for instance, no person is bound as a general rule to disclose his own title deeds (*n*), or to give information that may subject him to forfeiture (*o*), to penalties (*p*), or to criminal proceedings (*q*). It would be impossible to go into particulars here, especially as so much is always left to the discretion of the particular judge, with which the Court is invariably reluctant to interfere (*r*); the result being that the law on the subject is, to use the words of Dr. Lushington in

(*l*) *Morris v. Bethell*, L. R. 4 C. P. 765.

(*m*) *Whateley v. Crowter*, 5 E. & B. 709; *Moor v. Roberts*, 2 C. B. N.S. 671; *Thol v. Leask*, 10 Ex. 704.

(*n*) *Adams v. Lloyd*, 3 H. & N. 351.

(*o*) *Pye v. Butterfield*, 5 B. & S. 829.

(*p*) *Short v. Mercier*, 3 Mac. & Gor. 205; *Pritchatt v. Smart*, 7 C. B. 629.

(*q*) *Osborn v. London Dock Co.*, 10

Ex. 698.

(*r*) *Villeboisnet v. Tobin*, L. R. 4 C. P. 181.



*The Macgregor Laird* (s), “in a state of darkness or confusion.” Those who desire to know the results of the latest decisions can consult no better authority than Day’s Common Law Procedure (4th ed.), pp. 295–311. It will be observed, however, in the following chapters, that the law on this subject has been much improved by the Judicature Act and the Rules framed thereunder (t).

## EJECTMENT.

The Common Law Procedure Act, 1852 (u), has several Ejectment. very useful provisions respecting Ejectment, though one of them has had an effect that was probably not intended. It is directed in the 178th section that the issues shall be set down without any pleadings; there is, therefore, no means of setting up an equitable defence under the provisions of the Common Law Procedure Act, 1854 (x), and the Defendant having no remedy at Law (y), was still compelled to go into Equity, though this has, of course, been remedied by the Judicature Acts (z). The first-mentioned Statute, however, gives the Court, in a more extended form, an equitable power first given to it by 7 Geo. 2, c. 20, s. 1, viz., in an action of ejectment brought by any mortgagee for the recovery of land, if the mortgagor shall pay the mortgagee all the principal money due, together with interest and all the costs incurred, or in case of his refusal to accept the same, bring it into Court, the Court may not only give judgment for the Defendant, but compel the mortgagee (at the mortgagor’s expense) to surrender the lands in question and execute a reconveyance of them (a).

It is provided that this summary power shall not apply to cases where the right of redemption is controverted, or the money due not adjusted between the parties (b).

The Statute further provides that the several Courts and

(s) L. R. 1 A. & E. 307.

(t) As to the inspection of premises and chattels, see post, p. 60.

(u) 15 & 16 Vict. c. 76.

(x) 17 & 18 Vict. c. 125, ss. 83–86.

(y) *Neave v. Avery*, 16 C. B. 328.

(z) A defendant in possession is not, however, to plead his title unless he depends on an equitable right, 38 & 39 Vict. c. 77; Order xix. r. 15, post.

(a) 15 & 16 Vict. c. 76, s. 219.

(b) 15 & 16 Vict. c. 76, s. 220.



Ejectment. judges thereof shall retain all the powers they formerly possessed of causing the action to be tried on its merits (c).

The relief to be granted when this action is brought in consequence of a breach of some of the covenants in a lease will be found under the title Forfeiture (d).

#### EQUITABLE PLEADING.

Equitable  
pleading.

We have already (e) referred to the hardship it was for a man who had a good defence to an action not to be able to set it up in the Court in which the action was brought, but to be compelled to enter another Court as a plaintiff, and apply for an injunction to restrain his adversary from continuing an action which, if prosecuted, there was no way of preventing his succeeding in.

This state of things, however, continued without any remedy till the passing of the Common Law Procedure Act, 1854 (f), when for the first time an endeavour was made to enable defendants to set up as a defence at law the state of facts which would have enabled them to obtain an injunction in Equity, by enacting in the 83rd section that "It shall be lawful for any defendant or plaintiff in  
" replevin, in any cause in any of the superior Courts, in  
" which, if judgment were obtained, he would be entitled  
" to relief against such judgment on equitable grounds,  
" to plead the facts which entitle him to such relief by  
" way of defence, and the said Courts are hereby em-  
" powered to receive such defence by way of plea, provided  
" that such plea shall begin with the words 'for defence  
" on equitable grounds,' or words to the like effect."

We have already (g) stated that the value of this provision has been much diminished by the Courts holding that it only applies to cases where Equity would have granted an unconditional injunction (h).

It is impossible here to enumerate the cases in which equitable pleas have been allowed; for these the reader is

(c) 15 & 16 Vict. c. 76, s. 221.

(d) Post, p. 56.

(e) Ante, pp. 10, 11.

(f) 17 & 18 Vict. c. 125.

(g) Ante, p. 12.

(h) *Mines Royal Co. v. Magnay*,  
10 Ex. 489; *Phelps v. Prothero*, 16  
C. B. 370.



referred to Day's Common Law Procedure Act, 4th ed., pp. 328-335. It is enough here to mention accident, mistake, and fraud, and the fact that a person who legally appears a principal may in some cases shew he is only a surety. Among the equitable pleas allowed under this section is one of equitable set-off. Thus a defendant was allowed to plead that there was already sufficient realized security in the hands of the plaintiff (i); and also to set off a debt due to a third person as the trustee thereof for the defendant (k); and when the plaintiff himself is a trustee for a third person, and brings the action for his benefit, the defendant may set off a debt due from that third person to him (l).

Equitable  
set-off.

By the 84th section it is provided that "Any such matter which, if it arose before or during the time for pleading, would be an answer to an action by way of plea, may, if it arise after the lapse of the period during which it could be pleaded, be set up by way of *audita querela*" (m).

The 85th section enacts that "The plaintiff may reply, in answer to any plea of the defendant, facts which avoid such plea upon equitable grounds, provided that such replication shall begin with the words 'for replication on equitable grounds,' or words to the like effect." It has been held that an equitable plea makes the subsequent pleadings equitable, whether so pleaded or not (n).

Equitable  
replication.

It has also been decided that an equitable replication must not be inconsistent with the legal claim in the declaration (n); thus, the plaintiff cannot reply to a plea of infancy that the defendant induced him to enter into the contract by fraudulently representing that he was of full age (o), nor to a plea of the Statute of Limitations

(i) *Marcon v. Bloxam*, 11 Ex. 586.

(k) *Cochrane v. Green*, 9 C. B. N.S. 448.

(l) *Agra and Masterman's Bank v. Leighton*, L. R. 2 Ex. 56.

(m) *Savin v. Hoylake Railway Co.*, L. R. 1 Ex. 9; 17 & 18 Vict. c. 125, ss. 84, 85, 86; R. G., H. T., 1853, r. 79; 38 & 39 Vict. c. 77; Order xlii.

r. 22, post, p. 157.

(n) *Thames Iron Works Co. v. Royal Mail Steam Packet Co.*, 13 C. B. N.S. 358; see also *Gulliver v. Gulliver*, 1 H. & N. 174.

(o) *Bartlett v. Wells*, 1 B. & S. 836; *De Roo v. Foster*, 12 C. B. N.S. 272.



Equitable  
pleadings.

that the defendant fraudulently concealed the cause of action for six years (*p*). If, however, the replication be not inconsistent with the original claim, the plaintiff may reply any facts which shew that it would be inequitable for the defendant to be allowed to set up his legal claim (*q*).

Proviso.

In order to prevent the privilege of equitable pleading being abused, it is expressly enacted in the 86th section that any equitable plea or replication may be struck out if it appears to the Court or a judge that it cannot be dealt with by a Court of Law, so as to do complete justice between the parties.

#### FORFEITURE.

Forfeiture.

Under this head it is proposed to treat only of cases where a lease is forfeited, or where a person is liable to be turned out of the possession of property in consequence of a breach of one or more of the conditions on which he holds it, leaving the case of persons liable to pay sums of money to be treated hereafter under the head "Penalties" (*r*).

Non-pay-  
ment of  
rent.

Landlords continually protect their premises from treatment of which they disapprove by inserting covenants in leases giving them power to re-enter and put an end to the term on the breach by their tenants of various conditions. Courts of Equity have always been inclined to look on forfeitures with disfavour, and to relieve against them whenever they thought justice could be done by a money payment. As far as forfeiture for mere non-payment of rent, the equitable principle of relieving the tenant on payment of the rent due with costs, &c., was recognised, though in a measure restrained by 4 Geo. 2, c. 28, ss. 2-4, now repealed by the Statute Law Revision Act, 1867 (*s*), as unnecessary since the passing of the

(*p*) *Hunter v. Gibbons*, 1 H. & N. 459; *Imperial Gas Co. v. London Gas Co.*, 10 Ex. 39.

(*q*) *Lyall v. Edwards*, 6 H. & N. 337; *Watson v. Mid-Wales Railway*

*Co.*, L. R. 2 C. P. 593; *Higgs v. Northern Assam Tea Co.*, L. R. 4 Ex. 387.

(*r*) *Post*, p. 74.

(*s*) 30 & 31 Vict. c. 59.



Common Law Procedure Act, 1852 (*t*), the 211th and 212th sections of which, while limiting the powers of the Courts of Equity to a certain extent, nevertheless recognised them, and also enacted that tenants who at any time before trial, in an action of ejectment, paid the rent due and costs, were entitled to have the action stayed. The powers given by this Statute to the Courts of Equity of relieving against forfeiture for non-payment of rent were subsequently extended to the Courts of Common Law by the 1st section of the Common Law Procedure Act, 1860 (*u*).

There formerly was a tendency in the Courts of Equity to grant relief generally in almost all cases of forfeiture where there was no fraud and compensation could be given (*x*). Other breaches of covenant.

This tendency and the cases supporting it were discussed and disapproved of in *Hill v. Barclay* (*y*), which case was subsequently approved of in many others, and at last it seems to have been settled that Equity would not interfere to relieve against actions for breaches of covenant other than for non-payment of rent, principally on the ground that it was impossible in most cases to ascertain exactly the amount of damage done, or to replace the parties in the position in which they would have been had the covenant been observed (*z*).

Among the covenants which it was afterwards held Equity would not relieve against was, the common one of insuring against fire (*a*); this, it was evident, was often productive of great hardship, as the omission might have been accidental and for a short time only, and if no fire took place while the premises were uninsured, it was clear the landlord could not have been damnified. The Legislature accordingly intervened a few years ago; and by statute 22 & 23 Vict. c. 35, ss. 4-9, it was enacted that a

(*t*) 15 & 16 Vict. c. 76.

(*u*) 23 & 24 Vict. c. 126.

(*x*) See *Saunders v. Pope*, 12 Ves. 282; *Davis v. West*, *ibid.* 475; *Northcote v. Dube*, Amb. 511.

(*y*) 16 Ves. 402; 18 Ves. 56.

(*z*) See *Reynolds v. Pitt*, 19 Ves. 140; *Hillier v. Parkinson*, 9 L. J. 156; *Elliott v. Turner*, 13 Sim. 477; *Job v. Banister*, 2 K. & J. 374; *Doc d. Mathew v. Avery*, 10 A. & E. 71.

(*a*) *White v. Warner*, 2 Mer. 459.



**Forfeiture.** Court of Equity might relieve against forfeiture for breach of a covenant to insure or keep insured under certain conditions, the principal ones being that no damage from fire had taken place, that the breach was in the opinion of the Court caused by accident or mistake, and without fraud or gross negligence; and that the premises had since been insured in conformity with the covenant, and were so insured at the time of the application to the Court; it was also provided that relief should not be granted to the same person more than once in respect of the same covenant or forfeiture, and for this purpose, that the relief granted should be recorded by indorsement on the lease; nor should relief be granted if the covenantee had already waived out of Court a forfeiture for the same covenant in favour of the person seeking relief. There are also further provisions in favour of purchasers of leases to free them from liability, for previous breaches of such covenants of which they were not aware.

Legal and  
equitable  
relief.

This relief was, of course, purely equitable; but by the 2nd section of the Common Law Procedure Act, 1860 (*b*), it was enacted that it might be obtained from a Common Law Court or a judge thereof, in the same manner as from the Court of Chancery.

#### FRIENDLY SOCIETIES.

Friendly and Industrial Societies, as being useful to the working classes, have been for some considerable time the subject of legislation.

Friendly  
societies.

The laws respecting Friendly Societies were consolidated by the 18 & 19 Vict. c. 63, which repealed a great number of old statutes, and this statute as since amended by 21 & 22 Vict. c. 101, and 23 & 24 Vict. c. 58, now contains the law on the subject. The chief point deserving attention here is the jurisdiction given to the County Court; it is to settle all disputes not otherwise determinable (*c*), to enforce the decision of arbitrators, (*d*), to entertain an action

(*b*) 23 & 24 Vict. c. 126.

(*c*) 18 & 19 Vict. c. 63, s. 13.

(*d*) 18 & 19 Vict. c. 63, s. 41.



on the treasurer's bond (*e*), to decide all disputes arising from the dissolution of the societies (*f*), and to have the jurisdiction of the Court of Chancery (*g*)—subject to the control and regulation of the Lord Chancellor (*h*).

Industrial and Provident Societies, which have some of the same qualities as Friendly Societies, have likewise been the subject of legislation; the laws affecting them have also been consolidated, and they are now governed by 25 & 26 Vict. c. 87, as amended by 30 & 31 Vict. c. 117, and by the 3rd section of the last-mentioned statute, it is enacted that all provisions in the Friendly Societies Acts respecting the settlement of disputes in the County Courts shall apply to these societies, and by the 17th section of the first-mentioned Act, it is provided that all these societies are to be wound up in the County Court (*i*). Further information respecting these institutions can be obtained in "The Law of Friendly Societies," by Tidd Pratt (7th ed.), and Brabrook's "Industrial and Friendly Societies."

Industrial  
and Pro-  
vident  
Societies.

#### INJUNCTIONS.

Till a comparatively recent period the power of granting injunctions was one of the peculiar attributes of the Courts of Equity. It has, however, been recently granted to Courts of Law in several cases, for instance, in Copyright, as we have already seen (*k*), and in Patents, as will appear hereafter (*l*). Besides this, by the 79th and following sections of the Common Law Procedure Act, 1854 (*m*), it is enacted that in all cases of breach of contract or other injury, where the party injured is entitled to maintain and has brought an action, he may, in manner therein prescribed, claim a writ of injunction against the repetition or continuance of such breach of contract or other injury, and also in the same action include a claim for damages or other redress. It will be observed how

Injunctions.

(*e*) 18 & 19 Vict. c. 63, s. 22.

(*f*) 18 & 19 Vict. c. 63, s. 13.

(*g*) 18 & 19 Vict. c. 63, s. 41.

(*h*) 18 & 19 Vict. c. 63, s. 43.

(*i*) See also 25 & 26 Vict. c. 89, ss. 79-169.

(*k*) Ante, p. 47.

(*l*) Post, p. 73.

(*m*) 17 & 18 Vict. c. 125.



Injunctions.

very much smaller this power is than that possessed by the Courts of Equity; they can grant injunctions to prevent an injury being done by breach of contract or otherwise, if there is reasonable cause for anticipating it; the Courts of Common Law can only act when the injury has proceeded far enough to give grounds for an action for damages, and such action has actually been commenced.

#### INSPECTION OF PREMISES AND CHATTELS.

Inspection.

It is often necessary, for the purposes of justice, that the subject-matter in dispute, or the place in which it arose, should be inspected by the tribunal that is to try the question. This was to a certain extent provided for as long ago as the time of Queen Anne, when it was enacted (*n*) that where it should appear to the Court that it was proper and necessary that the jurors should have view of the messuages, land, or place in question, in order better to understand the evidence, the Court might issue a writ for the purpose, afterwards called a writ of view. This provision was subsequently amended, and afterwards, by the Common Law Procedure Act, 1852 (*o*), it was enacted that no writ of view should be necessary or used, but that it should be sufficient to obtain a rule of Court or judge's order directing a view to be had, and that then the proceedings should be the same as under a writ of view (*p*).

This was very well as far as it went, but there were still two *desiderata*: first, this rule only applied to the jury, and there were no means of obtaining a view, however necessary, for the party or his witnesses; secondly, it only applied to the inspection of real property, and not of any chattel. Both these defects were remedied by the Common Law Procedure Act, 1854 (*q*), section 58 of which enables either party to apply to the Court or a judge for a rule or order for the inspection by the jury, or by himself, or by his witnesses, of any real or personal property, the inspection of which may be material to the proper

(*n*) 4 Ann. c. 16, s. 8.

(*o*) 15 & 16 Vict. c. 76, s. 114.

(*p*) See Archbold's Practice, 12th

ed. p. 371.

(*q*) 17 & 18 Vict. c. 125.



determination of the matter in dispute. It has since been <sup>Inspection.</sup> held that the power given under this section of ordering inspection included, as necessarily incidental thereto, the power of ordering the removal of obstructions to such inspection (r).

## INTERPLEADER.

It is, and always must have been, an incident of frequent <sup>Inter-</sup> occurrence for an honest debtor to owe a sum of money <sup>pleaders.</sup> which he is able, ready, and willing to pay, but for which there are two or more persons calling themselves the rightful claimants, each of whom are threatening him with legal proceedings if he pays any of the others. It is also very common for a man to have money or goods in his possession, to which he lays no claim, and which he is desirous of handing to the lawful owner, if he could only ascertain who that owner is. Down to 1831 there was scarcely any possible relief for a person in this position, except by filing a bill of interpleader in Equity, a proceeding that was fenced in by many restrictions, and by no means applicable to all cases.

The first legal remedy for this state of things was <sup>Stat. 1 & 2</sup> afforded by 1 & 2 Will. 4, c. 58, s. 1, which enacted that— <sup>Will. 4.</sup>

“Whereas it often happens that a person sued at law  
 “for the recovery of money or goods, wherein he has no  
 “interest, and which are also claimed of him by some third  
 “party, has no means of relieving himself from such adverse claims but by a suit in Equity against the plaintiff  
 “and such third party, usually called a bill of interpleader,  
 “which is attended with expense and delay; for remedy  
 “thereof be it enacted—That upon application made by  
 “or on the behalf of any defendant sued in any of His  
 “Majesty’s Courts of Law at Westminster, or in the Court  
 “of Common Pleas of the County Palatine of Lancaster, or  
 “the Court of Pleas of the County Palatine of Durham,  
 “in any action of assumpsit, debt, detinue, or trover, such  
 “application being made after declaration, and before plea,  
 “by affidavit or otherwise, shewing that such defendant

(r) *Bennett v. Griffiths*, 4 E. & E. 467.



Inter-  
pleaders.

“ does not claim any interest in the subject-matter of the  
 “ suit, but that the right thereto is claimed or supposed to  
 “ belong to some third party who has sued or is expected  
 “ to sue for the same, and that such defendant does not in  
 “ any manner collude with such third party, but is ready  
 “ to bring into Court, or to pay or dispose of the subject-  
 “ matter of the action in such manner as the Court (or  
 “ any judge thereof) may order or direct, it shall be law-  
 “ ful for the Court, or any judge thereof, to make rules  
 “ and orders calling upon such third party to appear and  
 “ to state the nature and particulars of his claim, and  
 “ maintain or relinquish his claim, and upon such rule  
 “ or order to hear the allegations as well of such third  
 “ party as of the plaintiff, and in the meantime to stay  
 “ the proceedings in such action, and finally to order such  
 “ third party to make himself defendant in the same or  
 “ some other action, or to proceed to trial on one or more  
 “ feigned issue or issues, and also to direct which of the  
 “ parties shall be plaintiff or defendant on such trial, or,  
 “ with the consent of the plaintiff and such third party,  
 “ their counsel or attorneys, to dispose of the merits of  
 “ their claims and determine the same in a summary  
 “ manner, and to make such other rules and orders therein  
 “ as to costs and all other matters as may appear to be  
 “ just and reasonable.”

Sheriffs  
and other  
officers.

It was further enacted that the judgment should be  
 conclusive against the parties, and all claiming under  
 them (s), that any third party not appearing to substan-  
 tiate his claim should have it barred (t), and that if a  
 judge should think any case more fit to be heard by the  
 Court, he might refer it to them (u). The first section,  
 as we have seen, referred to claimants generally, but fur-  
 ther relief was given to sheriffs and other officers charged  
 with executions by the 6th section, which enacted that  
 “ Whereas difficulties sometimes arise in the execution of  
 “ process against goods and chattels, issued by or under  
 “ the authority of the said Courts, by reason of claims  
 “ made to such goods and chattels by assignees of bank-

(s) Sec. 2.

(t) Sec. 3.

(u) Sec. 5.



“rupts and other persons not being the parties against  
 “whom such process is issued, whereby sheriffs and other <sup>Sheriffs and other officers.</sup>  
 “officers are exposed to the hazard and expense of actions;  
 “and it is reasonable to afford relief and protection in  
 “such cases to such sheriffs and other officers; be it  
 “therefore further enacted, that when any such claim  
 “shall be made to any goods or chattels taken or intended  
 “to be taken in execution under any such process, or to  
 “the proceeds or value thereof, it shall and may be lawful  
 “to and for the Court from which such process issued,  
 “upon application of such sheriff or other officer made  
 “before or after the return of such process, and as well  
 “before as after any action brought against such sheriff or  
 “other officer, to call before them, by rule of Court, as  
 “well the party issuing such process as the party making  
 “such claim, and thereupon to exercise, for the adjust-  
 “ment of such claims, and the relief and protection of  
 “the sheriff or other officer, all or any of the powers and  
 “authorities hereinbefore contained, and make such rules  
 “and decisions as shall appear to be just, according to the  
 “circumstances of the case; and the costs of all such  
 “proceedings shall be in the discretion of the Court.”

This Act has since been amended by 1 & 2 Vict. c. 45, s. 2, giving further powers to single judges of all the Courts, and by 8 & 9 Vict. c. 109, s. 9, which abolished feigned issues in the old form of a wager, and directed another form of raising the question.

It will be observed that the relief given by the above statutes, though considerable, was still somewhat restricted, and also that there was a marked difference between the case of claimants generally, and that of sheriffs and other officers.

With regard to claimants generally, it is expressly <sup>Claimants generally.</sup> enacted that no one can apply for relief until he has been actually sued by some one, and it has been held that in most instances the statute only applied to cases in which Equity would formerly have granted a bill of interpleader (x).

(x) *Slaney v. Sidney*, 14 M. & W. 800.



Inter-  
pleaders.

It was also held that the parties claiming must claim the same subject matter (*y*), and that their titles must come from the same common source (*z*); that both the claims must be legal, and not equitable (*a*); that the real issue between the claimants must be capable of being fairly tried on the interpleader issue (*b*), and that the applicant has such possession of the matter in dispute as to be able to hand it over in accordance with the order of the Court (*c*).

With regard to the case of sheriffs and other officers interpleading between execution creditors and persons claiming the goods seized in execution, the law was more favourable, the sheriff being able to interplead as soon as a *bonâ fide* claim has been made to the goods, without waiting till an action has been commenced against him. He need not deny collusion in his affidavit (*d*) as others must do, though he may disentitle himself to relief by misconduct of various kinds (*e*).

C. L. P. Act,  
1860.

The Common Law Procedure Act, 1860 (*f*), has introduced improvements into the law of interpleader, first, by allowing relief though the titles have not a common origin (*g*), also by permitting a sale of the whole or part of the goods seized upon terms, leaving the proceeds to await the result (*h*), and by allowing the judge to decide in a summary manner when the goods are of small value. There are also provisions for stating a special case (*i*).

For further details as to the practice, the reader is referred to Day's Common Law Procedure (4th Ed.), pp. 353-364.

It must be remembered that this Common Law jurisdiction is in addition and auxiliary to, and not in sub-

(*y*) *Slaney v. Sidney*, 14 M. & W. 800.

(*z*) *Pearson v. Cardon*, 2 Russ. & My. 606, 610.

(*a*) *Sturgess v. Claude*, 1 Dowl. 506.

(*b*) *Baker v. Bank of Australasia*, 1 C. B. N.S. 515.

(*c*) *Allen v. Gilby*, 3 Dowl. 143; *Inland v. Burbell*, 5 Dowl. 147.

(*d*) *Bond v. Woodhall*, 4 Dowl. 351.

(*e*) *Ostler v. Bower*, 4 Dowl. 605; *Hollier v. Laurie*, 3 C. B. 334; *Winter v. Bartholomew*, 11 Ex. 704; *Bagshaw v. Farnsworth*, 2 L. T. N.S. 390.

(*f*) 23 & 24 Vict. c. 126.

(*g*) Sec. 12.

(*h*) Sec. 13.

(*i*) Secs. 15-18.



stitution of the right to file a bill of interpleader in Equity (*k*). Inter-pleaders.

The County Courts have jurisdiction in interpleader, when there are conflicting claims as to goods taken in execution under County Court process (*l*), but in no other cases (*m*).

#### ISSUES.

It was formerly impossible for any issue of fact to be decided at Common Law without the intervention of a jury, but now by the 1st section of the Common Law Procedure Act, 1854 (*n*), it is enacted that the parties to a cause may, by consent in writing, signed by themselves or by their attorneys, leave the decision of any issue of fact to the Court, and in such case the issue may (by permission of the Court) be disposed of by the judge who would have presided at the trial, either with or without the assistance of any other judge or judges of the same Court, or included in the same commission of assize, and such verdict shall be of the same effect as the verdict of a jury, except that it shall not be questioned as being against the weight of evidence. Issues of fact.

This enactment, which is somewhat in the spirit of the Equity Courts, where all questions (unless an issue be directed) are tried by the judge, has, we believe, almost been a dead letter, as there are very few instances of its having been used.

When used at all it has been in cases where either the facts are almost admitted, or are so mixed with the law as to be scarcely severable from it.

#### JOINT-STOCK COMPANIES.

With the enormous increase of modern commerce, it has become usual for large numbers of men to join together to carry on certain businesses requiring too much capital to Companies.

(*k*) *Hale v. Saloon Omnibus Co.*, 4 Drew. 492; *Langton v. Horton*, 4 Beav. 604; *Oriental Bank v. Nicholson*, 3 Jur. N.S. 857.

(*l*) 30 & 31 Vict. c. 142, s. 31.

(*m*) *Davis' County Courts*, 5th ed. p. 375.

(*n*) 17 & 18 Vict. c. 125.



Joint-  
Stock Com-  
panies.

be easily raised by one individual, or even by two or three. These associations at first were not recognised by the Legislature at all, and were consequently, legally, neither more nor less than gigantic partnerships, partaking all inconveniences necessarily attending such a state of things; for instance, in suing or being sued it was necessary to insert the name of every member on the record.

Rectifying  
register.

It is needless here to specify how this state of things gradually changed, companies being from time to time incorporated by Act of Parliament or by Royal Charter, and at last being enabled to form themselves under the provisions of various Acts. The earlier statutes affecting joint-stock companies have all been repealed by 25 & 26 Vict. c. 89, and ordinary companies are now regulated by that statute, as amended by 30 & 31 Vict. c. 131. These companies can now sue and be sued in the Common Law or Equity Courts by their corporate name (*o*); and there is an equitable power given by the 35th section to all the superior Courts of Law or Equity, or to any judge thereof, and that is, to make an order for the rectification of the register in case of the improper omission or entry of any name thereon.

If it be found that these companies are unable to meet their engagements, instead of going into bankruptcy, they are to be wound up by the Court of Chancery (*p*), and in some cases the proceedings for this purpose may be transferred into the County Court (*q*) or the Bankruptcy Court (*r*), which, however, is unusual (*s*).

#### JURY.

Trial by  
Jury.

If there be one thing more than another which has always been looked upon as the characteristic most peculiarly appertaining to the Courts of Common Law, and distinguishing them from all other tribunals, it is trial by jury. Among the tendencies of modern times towards the fusion

(*o*) 25 & 26 Vict. c. 89, s. 18.

(*p*) 25 & 26 Vict. c. 89, ss. 79, 81.

(*q*) 25 & 26 Vict. c. 89, s. 81.

(*r*) Ibid.

(*s*) For full particulars as to these companies, see Cox on Joint Stock Companies, and Lindley on Partnerships.



of Law and Equity, and the amalgamation of our different Trial by systems of jurisprudence into one, has been the extension jury. of their mode of deciding disputed facts to other Courts. We have already seen (t) that by Cairns' Act (u) power was given to the Court of Chancery to award damages or decide questions of fact for itself, instead of pursuing the cumbrous procedure of directing an issue for the purpose, to be tried in one of the Common Law Courts, and that in every case in which it exercised such power it might in its discretion summon a special or common jury for its assistance. Again (v), by Rolt's Act (x), where the Court of Chancery is directed to decide all necessary questions of law or fact for itself, it is enacted that for the decision of the latter it may always summon a jury.

The Court of Chancery is not the only Court to which this power is now given. Though juries were unknown in the Ecclesiastical Courts, they are constantly being summoned in the two new Courts which now take a large portion of the old ecclesiastical business, viz., the Divorce Court (y) and the Probate Court (z).

The Judicature Acts contain important provisions respecting trials by jury (a).

#### LEGITIMACY.

There are many instances in which a person can antici- Legiti- pate that a period will arrive in which it may be of the macy. highest importance for him, or for those related to him, or claiming through him, to prove either his legitimacy or the validity of his marriage; and that at that period, owing to the death of witnesses or other circumstances, it will be impossible for the requisite proof to be obtained. Until August, 1858, a person in this position could do nothing but apply to the Court of Chancery for permission Bill for perpetua- to file a bill for the perpetuation of testimony, a remedy ting testi- very imperfect, and one which would apply in only a few mony.

(t) Ante, pp. 12, 48.

(u) 21 & 22 Vict. c. 27.

(v) See ante, p. 12.

(x) 25 & 26 Vict. c. 42.

(y) Ante, p. 21.

(z) Ante, p. 20.

(a) 36 & 37 Vict. c. 66, s. 46; 38 & 39 Vict. c. 77, s. 22; post, chaps. iv., v., pp. 91, 129, 157.



Legiti-  
macy.

instances. One great objection to this mode of proceeding was the fact that as the depositions taken were never published till after the death of the witnesses, there was no mode of punishing perjury if committed, and this alone made the Courts unwilling to permit a bill unless absolutely necessary (b). Equity, further, was in the habit of refusing permission to file a bill unless the person applying for it could shew most clearly two things, first, that he had an absolute interest in the matter for which he sought to perpetuate the testimony (c); and, secondly, that there was no method whatever by which the question in dispute could possibly be raised at the present time (d): two things, especially the former, which it must in many cases have been impossible to do. Indeed, at first the Court would only allow such a bill to be filed where some right to property was in dispute (e); it was, however, enacted by 5 & 6 Vict. c. 69, that any person was entitled to it who could shew that, under the circumstances alleged by him to exist, he would become entitled to any honour, title, dignity, or office, or to any estate or interest in any property, real or personal (f). It is manifest, however, that even this extension would not meet many cases in which a person might fairly desire to shew there was no stain on his birth, or on that of his children, and the want is now supplied by the Legitimacy Declaration Act, 1858 (g). By this statute it is enacted in the 1st section that "Any natural-born subject of the Queen, or any  
" person whose right to be deemed a natural-born subject  
" depends wholly or in part on his legitimacy or on the  
" validity of a marriage, being domiciled in England or  
" Ireland, or claiming any real or personal estate situate  
" in England, may apply by petition to the Court for  
" Divorce and Matrimonial Causes, praying the Court for  
" a decree declaring that the petitioner is the legitimate

Legiti-  
macy  
Declara-  
tion Act.

(b) *Angell v. Angell*, 1 Sim. & S. 83.

(c) *Dursley v. Fitzhardinge*, 6 Ves. 251.

(d) *Earl Spencer v. Peel*, L. R. 3 Eq. 415.

(e) See the *Townshend Peerage*, 10 C. C. & P. 289.

(f) For further particulars respecting the circumstances under which this bill can be filed, see *Snell's Principles of Equity*, 2nd ed. pp. 507, 510.

(g) 21 & 22 Vict. c. 93.



“ child of his parents, and that the marriage of his father  
“ and mother, or of his grandfather and grandmother, was <sup>Legiti-</sup>  
“ a valid marriage, or for a decree declaring either of the <sup>macy.</sup>  
“ matters aforesaid; and any such subject or person,  
“ being so domiciled or claiming as aforesaid, may in like  
“ manner apply to such Court for a decree declaring that  
“ his marriage was or is a valid marriage, and such Court  
“ shall have jurisdiction to hear and determine such appli-  
“ cation, and to make such decree declaratory of the legi-  
“ timacy or illegitimacy of such person, or of the validity  
“ or invalidity of such marriage, as to the Court may seem  
“ just; and such decree, except as hereinafter mentioned,  
“ shall be binding to all intents and purposes on Her  
“ Majesty and on all persons whomsoever.”

It is clear that this section applies to every subject of the realm without exception, and that it is no longer necessary for any one to make out a reason satisfactory to the Court, or indeed give any reason at all for his application; he simply exercises a right the Legislature has given him, and proves facts which may be of the highest importance to him or his, without divulging to any one why he thinks his conduct necessary or prudent.

The 2nd section gives to every one the right of apply- <sup>Natural-</sup>  
ing to the same Court to prove that he is a natural-born <sup>born</sup>  
subject of the realm, a right as important as, and often <sup>subjects.</sup>  
co-existent with the other, by enacting that “ Any person,  
“ being so domiciled or claiming as aforesaid, may apply  
“ by petition to the said Court for a decree declaratory of  
“ his right to be deemed a natural-born subject of Her  
“ Majesty, and the said Court shall have jurisdiction to  
“ hear and determine such application, and to make such  
“ decree thereon as to the Court may seem just; and  
“ where such application as last aforesaid is made by the  
“ person making such application as herein mentioned for  
“ a decree declaring his legitimacy or the validity of a  
“ marriage, both applications may be included in the same  
“ petition; and every decree made by the said Court  
“ shall, except as hereinafter mentioned, be valid and  
“ binding to all intents and purposes upon Her Majesty  
“ and all persons whomsoever.”



Legiti-  
macy.

The residue of the statute contains provisions against any abuse of the powers here granted, or of their being exercised fraudulently.

It is further noticeable that the power of exercising what was formerly an exclusively Equitable jurisdiction is now conferred on the Divorce Court—a Court which exercises an originally ecclesiastical jurisdiction, and yet acts generally on Common Law principles.

#### MANDAMUS.

**Mandamus.** The ancient writ of *mandamus* has been familiar to our Common Law Courts almost from time immemorial, but the Common Law Procedure Act, 1854 (*h*), for the first time introduced an action for a *mandamus*, the idea of which seems to have been something similar to an injunction in Equity. The 68th section enacted that the plaintiff in any action, except replevin and ejectment, might indorse on the writ and copy a notice that he intends to claim a writ of *mandamus*, and that he might thereupon, either together with any other demand or separately, claim in the declaration a writ of *mandamus*, “command-  
“ing the defendant to fulfil any duty, in the fulfilment of  
“which the plaintiff was personally interested.” At first attempts were made to obtain these writs very much in the way in which Equity was applied to, to decree specific performance; but the Courts of Law, which at the time this Act was passed were inclined to restrict their equitable jurisdiction as much as possible, put an end to all these attempts by holding that the duty which the defendant could be commanded to fulfil under the above provision must be of a public or *quasi* public nature, and not merely a private one (*i*); thus they would not grant a *mandamus* for the execution of a lease (*k*), nor for any matter in which an action would be an equally efficacious remedy (*l*); but one will be granted to compel improvement commissioners to levy rates to pay an architect (*m*), or to apply the proceeds of rates in the payment of debent-

(*h*) 17 & 18 Vict. c. 125, ss. 68–77.

(*i*) *Benson v. Paull*, 6 E. & B. 273.

(*k*) *Ibid.*

(*l*) *Burb v. Beavan*, 1 H. & C. 500.

(*m*) *Ward v. Lowndes*, 1 E. & E. 940.



tures (*n*), or to make a joint stock company restore the name of a shareholder on the register from which it was improperly removed (*o*), though in this latter case the Court seem rather to have acted under the power given them to rectify the register under the 35th section of the Companies Act, 1862 (*p*), than under their powers of granting a *mandamus* in the manner here referred to. Mandamus.

The sections above mentioned have been amended as far as costs are concerned by the 32nd section of the Common Law Procedure Act, 1860 (*q*); and it is expressly enacted that the old jurisdiction of the Queen's Bench to grant a prerogative writ of *mandamus* is to remain unaltered (*r*).

#### MERCHANDISE MARKS.

It has always been held in this country that a tradesman has an exclusive right to any mark or badge which he has appropriated to his own goods, as a means of distinguishing them from those of others. If this right was infringed his usual remedy was to move in a Court of Equity for an injunction restraining the person using his mark improperly, and for an account of any profits he might have made by so doing (*s*). He might also bring an action at law for the same offence, and was entitled to a verdict at all events (*t*), and to whatever damages he could prove he had sustained (*u*). Merchan-  
dise marks.

We have already shewn how the Court of Chancery can award damages (*x*), and the Courts of Common Law grant injunctions (*y*), but in the case of the infringements of marks on merchandise there are now further and special remedies granted by the Merchandise Marks Act, 1862 (*z*). This Statute, after various provisions for preventing the piracy of these marks, for punishing those guilty of the offence, and for compensating those injured by it, proceeds Legal and  
equitable  
remedies.

(*n*) *Webb v. Commissioners of Herne Bay*, L. R. 5 Q. B. 642.

(*o*) *Swan v. North British Australasian Co.*, 7 H. & N. 603; S. C. in Ex. Ch. 2 H. & C. 175.

(*p*) 25 & 26 Vict. c. 89.

(*q*) 23 & 24 Vict. c. 126.

(*r*) 17 & 18 Vict. c. 125, s. 75; 36 & 37 Vict. c. 66, ss. 12, 16, 22, 34, 41; ante, p. 17; post, p. 84, chap.

iv., pp. 99, 122.

(*s*) See Kerr on Injunctions, pp. 474-491.

(*t*) *Blofield v. Payne*, 4 B. & Ad. 410; *Rodgers v. Nevill*, 5 C. B. 109.

(*u*) *Sykes v. Sykes*, 3 B. & C. 541.

(*x*) Ante, pp. 12, 48.

(*y*) Ante, pp. 13, 59.

(*z*) 25 & 26 Vict. c. 88.



Merchan-  
dise marks.

in the 21st section to enact, that in every suit at Law or in Equity for forging or counterfeiting any trade-mark, or wrongfully applying such mark to any article, or selling or exposing for sale any article with such-mark wrongfully affixed, or for preventing the repetition or continuance of any such wrongful act, if the plaintiff shall obtain a judgment or decree against the defendant, the Court shall have power to order every such chattel or article to be destroyed or otherwise disposed of, and if the action be in a Court of Law the Court may, on giving judgment, award a writ of injunction to the defendant, commanding him to refrain from such acts in future, any disobedience to such injunction being punishable as a contempt of Court. It is further enacted, that any Court of Law or Equity in which any proceeding is commenced, or any judge thereof, may grant inspection.

1st. Of any manufacture or process carried on by the defendant in which it is alleged any trade-mark of the plaintiff is counterfeited.

2nd. Of any articles in the possession of the defendant, or under his control, in which it is alleged the plaintiff's trade-mark has been wrongly applied; and

3rdly. Of any instruments in the possession or under the control of the defendant capable of being used for counterfeiting the plaintiff's trade-mark.

And any one disobeying such order of inspection is to be held guilty of a contempt of Court.

This section contains as much blending of legal and equitable powers as we ever remember to have seen (a).

#### ORAL EVIDENCE.

Evidence.

Among other distinctions between the practice of the Courts of Common Law and Equity, is the fact that the usual mode of taking evidence in the former is by the examination of witnesses in open court, and in the latter by means of affidavits. For a long time the only possible means of taking evidence in Equity was by affidavit; but by the 15 & 16 Vict. c. 86, ss. 29-41, provisions are made

(a) For further information on the subject of trade-marks, see the treatise of Mr. Adams, and that of Messrs. Ludlow and Jenkins.

tise of Mr. Adams, and that of Messrs. Ludlow and Jenkins.



for the reception of oral evidence in the Equity Courts Evidence. at the desire of either party. These provisions were, however, by no means of the use they were expected to be, for instead of the evidence being taken before the Court itself, it was directed to be taken before examiners, either those ordinarily appointed by the Court to the office or specially appointed for the occasion. The duty of these examiners is to take the evidence down in writing and then transmit it to the Court. It may be asserted without fear of contradiction that the mode of taking evidence in contested cases is the weakest part of the whole Chancery system, and though having witnesses examined orally at all is no doubt an improvement on the old plan of letting them swear affidavits, yet the advantage is reduced to a minimum by having the witnesses examined by officers appointed for the purpose, so that the Court which has to decide on the value of their evidence has no means of witnessing their demeanour, or being aware of the manner in which their testimony has been given. It is true that the Court has the power under the 39th section of summoning any witness to be examined before itself, if it thought fit: but this power, we believe, is very seldom, if ever, exercised.

The parties are, however, at liberty to apply to the Court for leave to have all the witnesses examined in open court (b), and this application is not unfrequently made; but, if rumour is not wrong, it is discouraged as much as possible by most of the Equity judges who are unaccustomed to it, and is not much liked by the leading counsel in the Courts, who find it disagreeable to discharge the duties of examination and cross-examination, which from want of habit they cannot do satisfactorily. The Judicature Acts will have an important bearing upon this question.

#### PATENTS.

Patents are now principally regulated by 15 & 16 Vict. Patents. c. 83, as amended by subsequent Acts. We have already

(b) See Daniell's Ch. Prac. pp. 807, 830, 840; post, p. 88.



Patents.

seen that in certain cases Courts of Equity are empowered to award damages (c), and Courts of Common Law to issue injunctions (d), but neither tribunal possessed this power at the time the above Statute was passed; yet, by the 42nd section, it was enacted that in any action brought for the infringement of a patent in any of the superior Courts of Common Law, it should be lawful for the Court in which such was pending, or, if the Court was not sitting, for any judge thereof, "on the application of the plaintiff" or defendant respectively, to make such order for an injunction, inspection, or account, and to give such direction respecting such injunction, inspection, and account, and the proceedings therein respectively, as to such Court or judge may seem fit."

Legal and equitable powers.

We have here an instance of purely equitable powers being granted to Courts of Common Law. The above Statute, which was passed the day after the Common Law Procedure Act, 1852 (e), enacted in the 41st section that the plaintiff should, in every action for the infringement of a patent, deliver with his declaration particulars of the breaches on which he intended to rely. In consequence of this enactment, a plaintiff applied to the Court for permission to deliver interrogatories to the defendant *before* declaration, alleging in affidavits that it was impossible for him to deliver the requisite particulars without obtaining the information sought for. The Court refused the application, but stated that the plaintiff would probably be entitled to the interrogatories after issue joined, and in that case he would be at liberty to amend the particulars of breaches in accordance with the defendant's answer (f).

#### PENALTIES (g).

Penalties.

It is an extremely common thing in contracts either to pay money at a certain time or for other purposes to insert a condition that the contractor shall either fulfil

(c) Ante, pp. 12, 48.

(d) Ante, pp. 13, 59.

(e) 15 & 16 Vict. c. 76.

(f) Jones v. Platt, 6 H. & N. 697;

S. C. nom. Jones v. Platt, 30 L. J. Ex. 365.

(g) See Forfeitures, ante, p. 56.



his contract or pay a certain stipulated penalty. These Penalties. penalties, which were strictly enforceable at law, were always looked upon unfavourably by Courts of Equity, who considered the real object of the parties was to secure the performance of the contract, and not the payment of the stipulated sum. This was particularly the case with respect to money bonds given to secure the payment of money at a particular time, and here Equity would always relieve from the penalty on payment of the sum due, with lawful interest for the delay in paying it. In other cases Equity would look at the nature of the parties making the contract, and judge whether the sum stipulated to be paid was merely meant to enforce the performance of the contract, when it was called a penalty, and its payment was relieved against; or whether it was the price at which the parties themselves had chosen to assess the damages for the breach of the agreement, when it was looked upon as a fixed sum, called liquidated damages, and no relief could be obtained.

By the 8 & 9 Will. 3, c. 11, s. 8, and 4 & 5 Anne, c. 16, ss. 12, 13, defendants were able to raise the point at Law, whether the penalty enacted was strictly a penalty merely, or liquidated damages. These Statutes have not ousted Equity of its jurisdiction, but have considerably diminished the number of cases in which its interference is sought, and the question is now generally raised at Common Law.

There is one very considerable difference in the doctrine of the Courts of Common Law and Equity regarding the effect of a penalty as distinguished from liquidated damages. In Law, nothing (till very recently (*h*)) could be done for the injured party except giving him such damages, not exceeding the penalty named, as a jury found he had sustained; any one, therefore, could violate his engagement with impunity, if he was prepared to pay the penalty. In Equity, however, it has always been laid down that a penalty is not to be considered as the price of doing a thing which a man has expressly agreed not to do;

Difference :  
in the  
doctrine of  
Law and  
Equity.

(*h*) See Injunctions, ante, p. 59.



Penalties. hence an injunction will be freely granted in such cases (i).

With regard to when the payment of a sum for the breach of agreement is to be considered a penalty, and when liquidated damages, the Courts of Law and Equity go upon very much the same principles, both relieving in the one case, and refusing to interfere in the other. The general principle is, the sum to be paid is considered a penalty when the exact damages are easily ascertainable, or when one sum is stipulated to be paid to secure the performance of a number of trifling things; it is considered as liquidated damages when it is to prevent or secure one particular thing being done, or when the damages are utterly unascertainable, and therefore fit to be assessed by the parties themselves (k).

#### PETITION OF RIGHT.

Petition of right.

It not being decent in a Monarchical country, or consistent with the respect due to the Sovereign, that an action shall be brought against him in any respect, it became necessary to provide for cases in which the Crown might be unlawfully possessed of property belonging to a subject. As, of course, this would be involuntary, the mode of redress was by means of a petition, called a Petition of Right. It would be tiresome and unnecessary here to go into the details of this proceeding, which were cumbersome, tedious, and expensive. They have, however, been very much simplified by the Petition of Right Act, 1860 (l), which directs that such petition may be intitled in any such one of the superior Courts of Law or Equity in which the subject-matter of the dispute would have been cognizable had it been in dispute between subject and subject.

It has been held that the only effect of this Act has been to simplify proceedings in petitions of right, and to

(i) *Harding v. Martin*, 1 Cox. Cas. Eq. 26; *Howard v. Woodward*, 34 L. J. Ch. 47.

(k) See Kerr on Injunctions, pp.

81, 514; Addison on Contracts, 6th ed. p. 1090; Chitty on Contracts, 9th ed. p. 819.

(l) 23 & 24 Vict. c. 34.



enable them to be tried in any of the Courts named, but not to give subjects any remedy against the Crown which they did not possess before (*m*).

#### PRINCIPAL AND AGENT.

In cases which arise out of the relationship created between principal and agent, the Courts of Law and of Equity have nearly equal jurisdiction, some such cases being only capable of being tried in the one tribunal, some only in the other, and many in both. For instance, Equity is the tribunal to compel an agent to render an account to his principal, while it has long been held that an action for money had and received lies against an agent for any specific sums which he has received on account of his principal. Principal and agent.

Again, a person sued as principal can set up, in an equitable plea at any rate, that to the knowledge of the defendant he only contracted as agent (*n*).

PROMISSORY NOTES. *See* BILLS OF EXCHANGE (*o*).

#### QUESTIONS OF LAW AND FACT.

There was formerly no method of settling any disputed questions of law or fact, however much the parties were agreed on what the question was, except by going through the trouble and expense of a trial at Law. We have already seen (*p*) how, by the combined operation of 15 & 16 Vict. c. 86, s. 61, 21 & 22 Vict. c. 27, and 25 & 26 Vict. c. 42, the Court of Chancery has power to decide not only all questions of law, but also all questions of fact for itself, without directing an issue to be tried by, or stating a case for, the opinion of a Court of Common Law. Questions of law and fact.

There is also now a mode provided, by which these questions can be speedily raised in the Courts of Common

(*m*) *Tobin v. The Queen*, 16 C. B. N.S. 310; *Feather v. The Queen*, 6 B. & S. 257; see also *Churchward v. The Queen*, L. R. 1 Q. B. 173.

(*n*) *Wake v. Harrop*, 6 H. & N. 768.  
(*o*) *Ante*, p. 42.  
(*p*) *Ante*, pp. 12, 48.



Questions  
of law and  
fact.

Law without going to the expense of a trial, it being enacted by the Common Law Procedure Act, 1852 (*q*), that questions of fact may be stated without pleadings for the decision of a jury, or questions of law for the opinion of the Court. The Court must, however, be satisfied that the parties have a *bonâ fide* interest in the question to be thus tried (*r*).

#### RAILWAY AND CANAL TRAFFIC.

Railway  
and canal  
traffic.

In 1854 a very peculiar and extensive jurisdiction was given to the Court of Common Pleas by 17 & 18 Vict. c. 31, for the purpose of regulating the traffic on railways and canals. The 2nd section directs the companies to give their customers all reasonable facilities for forwarding goods, and that they are not to be guilty of any undue delay, or to give any one customer or set of customers any advantages of any kind over the others, and by the third section it is enacted that any persons complaining of any violation of this direction, may apply to the Court of Common Pleas by summons or motion, and the Court may compel the defaulting companies to do their duty, or refrain from committing a wrong, by writ of injunction or interdict, which writ shall be enforceable by attachment. By 31 & 32 Vict. c. 119, s. 16, the provisions of this statute are extended to the use of steamboats worked by railway companies in conjunction with their own lines.

This jurisdiction, which was thus vested in the Court of Common Pleas, and constantly exercised by them till 1873, was in that year taken away from them by 36 & 37 Vict. c. 48, and transferred to a body called Railway Commissioners, some additional powers being also conferred upon them.

#### REFERENCES.

Arbitra-  
tion.

One of the most useful means of settling a dispute is arbitration, or referring it to some independent person to settle what ought to be done between the parties. Indeed,

(*q*) 15 & 16 Vict. c. 76, ss. 42-48.  
(*r*) Sec. 42; *Doe d. Duntze v. Duntze*, 6 C. B. 100.



this method of trial is the only one which is capable of doing justice in cases of certain descriptions, for example, of disputed accounts. References, however, were at one time much discouraged by the Courts, as ousting their jurisdiction, but for a long time the tendency has been in an opposite direction. There have been from time to time various statutes passed, in which it has been expressly enacted that disputes between particular persons or bodies of men shall be referred to arbitration, and by the Common Law Procedure Act, 1854 (s), not only are great facilities given for referring differences to the decision of an arbitrator, and enforcing awards, but it is expressly enacted that persons may agree to refer existing or future differences to arbitration, and that if, after they have done so, they nevertheless proceed to litigation, the Court will stay the proceedings in such action; and it has since been held that this provision applies to Courts of Equity as well as Law (t).

It is also provided that after the issuing of a writ, if it be made to appear to the satisfaction of the Court or a judge that the matters in dispute consist either wholly or in part of matters of mere account which cannot be conveniently tried in the ordinary way, it or he may compulsorily order such matter to be referred (u). It has, however, been held that this power of ordering a reference compulsorily can only be exercised by the Court or a judge at Chambers, and not at the time of trial by the judge sitting at *Nisi Prius* (x).

## REPLEVIN.

Replevin is an extremely ancient form of action, and is a method whereby a person whose goods are distrained or unlawfully seized may obtain possession of them immediately, on giving sufficient security that he will without delay prosecute an action against the distrainer. This procedure has been from time to time improved and

(s) 17 &amp; 18 Vict. c. 125, ss. 11-17.

(u) 17 &amp; 18 Vict. c. 125, ss. 3-10.

(t) *Willesford v. Watson*, L. R. 14 Eq. 572; L. R. 8 Ch. 473.(x) *Robson v. Lees*, 6 H. & N. 258.



**Replevin.** made less complex, and now, by the 83rd section of the Common Law Procedure Act, 1854 (*y*), it is enacted that equitable pleading applies to this action, that is, that any facts may be raised at Law which would be an answer in Equity, or entitle the plaintiff or defendant to an injunction restraining his adversary from maintaining the action or setting up a defence.

### SHIPPING.

**Shipping.** In a mercantile and maritime country, such as England has been for centuries, it is scarcely necessary to say that its merchant shipping is of the highest importance, and regulations respecting it have been continually made by statute. It is now principally regulated by the Merchant Shipping Act, 1854 (*z*), as amended by subsequent statutes (*a*), and the provisions of these Acts are enforceable by the Courts both of Law and of Equity, and also in some instances by the Court of Admiralty, the County Courts (*b*), and even Criminal Courts.

**Collision  
and negli-  
gence.**

For instance, damages caused by a collision or other negligence may be sued for, and the amount recovered either in the Courts of Common Law or of Admiralty (*c*), though in the case where both vessels are in fault, a different rule obtains, but by the Judicature Act the rule now in force in the Court of Admiralty is to prevail universally (*d*). If there are different claimants for damage done, and the defendant, in consequence, is harassed by a multiplicity of actions, relief was only to be found in the Court of Chancery (*e*), or in some cases in that of Admiralty (*f*), but for some years it has been obtainable in the Courts of Common Law as well (*g*). Again, if loss of life or personal injury has resulted from

(*y*) 17 & 18 Vict. c. 125.

(*z*) 17 & 18 Vict. c. 104.

(*a*) 18 & 19 Vict. c. 91, 111; 23 & 24 Vict. c. 125, s. 35; 24 Vict. c. 10; 25 & 26 Vict. c. 63; 30 & 31 Vict. c. 124; 32 & 33 Vict. c. 11; 34 & 35 Vict. c. 110; 35 & 36 Vict. c. 73; 36 & 37 Vict. c. 85.

(*b*) Ante, pp. 18, 37.

(*c*) Lowndes on Admiralty Law, p. 192.

(*d*) 36 & 37 Vict. c. 66, s. 25, sub-s. 9; post, chap. iv., p. 115; 38 & 39 Vict. c. 77; post, chap. v., p. 157.

(*e*) 17 & 18 Vict. c. 104, s. 51.

(*f*) 24 Vict. c. 10, s. 13.

(*g*) 23 & 24 Vict. c. 126, s. 35.



a collision between two vessels, there is a separate and Shipping. peculiar jurisdiction given to the Board of Trade (h); while cases of salvage fall exclusively within the jurisdiction of the Court of Admiralty (i), except in such cases as come within that of the County Courts (k).

Although Courts of Equity generally make a point of upholding all equitable titles whatever, they have nevertheless decided that they will not give effect to an equitable mortgage of a ship, as by so doing they would nullify those provisions of the Merchant Shipping Acts which direct that the property in a ship shall be transferred in a particular manner, and in that manner alone (l).

## TITLE.

According to the former practice of the Court of Title. Chancery, it was only in the habit of acting when there was little or no doubt as to the facts in respect of which the suit arose. Especially, if a plaintiff claimed relief in any case in which the Court had a doubt whether he had a legal title to the subject-matter in dispute, it was the almost invariable practice to refuse a decree until he had established his right or title by an action at Law. By the 15 & 16 Vict. c. 86, s. 62, it was however enacted that in such cases the Court of Equity might itself determine the right or title, without requiring the parties to proceed at Law to establish the same. This provision left it optional with the Court to decide questions of title or not at its discretion, but by the 25 & 26 Vict. c. 42, s. 1, already mentioned (m), it is now enacted that the Court *shall* determine for itself every question of law or fact (of course including title) necessary to be determined in order to ascertain whether the required relief ought to be granted or not. Since this last-mentioned statute, every question of title, if it occurs in an equitable suit, is determined by the Court in which it arises, as would be the case if it arose in a Court of Law.

(h) 17 & 18 Vict. c. 104, ss. 507–513.

(i) 17 & 18 Vict. c. 104, s. 468.

(k) 25 & 26 Vict. c. 63, s. 49, sub-

s. 6; 31 & 32 Vict. c. 71, s. 3.

(l) Trustees of Liverpool Bank v. Turner, 1 J. & H. 159.

(m) Ante, p. 12.



## CHAPTER III.

## THE CONSTITUTION OF THE SUPREME COURT OF JUDICATURE.

*One Supreme Court divided into the High Court of Justice and Courts of Appeal—Law and Equity to be concurrently administered—Rules of Equity to prevail—Administration of Laws and Forms of Procedure.*

*The High Court of Justice—Its Jurisdiction—Pending Business—Exclusive Jurisdiction Reserved.*

*Rules and Orders—Forms of Procedure—Joinder of several Causes of Action—Pleadings—Evidence—Interrogatories—Criminal Matters.*

WE now come to the Judicature Acts, with a view of directing attention in this Chapter to the more important provisions of those Statutes; whilst at the same time we desire to remind the reader that he will only be able fully to understand the changes which have been effected after a careful perusal of the two Statutes conjointly, and with especial reference to the jurisdiction and practice of the various Courts of Common Law and Equity as existing at the time of the passing of the Acts (a).

One  
Supreme  
Court.

The first thing that attracts notice is the fact that all the Superior Courts of the Kingdom, instead of being separate and independent of each other, are now fused and blended together into one grand tribunal, called the Supreme Court of Judicature (b).

Law and  
Equity  
concurrent.

The next point worthy of notice is this, that the Judges of the Land, instead of exercising, as heretofore, different jurisdiction, and dispensing justice on different principles, are now to exercise the same jurisdiction and to administer the laws upon the same principles (c); so that Law and Equity may be concurrently applied to the same cause or matter by the same Judge (d).

(a) Ante, chaps. i., ii.; post, chaps. iv., v., pp. 91, 157.

(b) 36 & 37 Vict. c. 66, ss. 1, 3;

post, chap. iv., p. 92.

(c) 36 & 37 Vict. c. 66, s. 24.

(d) 36 & 37 Vict. c. 66, ss. 5, 24.



The third question, which is of considerable importance, and will require the highest legal acumen, is the declaration of the principle, that where there is any conflict or variance between the construction which has hitherto prevailed in the Courts of Law and Equity with reference to the same matter, the rules of Equity are generally to prevail (*e*). Equity prevails.

The fourth point which should be remembered is this, that, subject as aforesaid, and to a declaration of the Law upon a few special matters, the Judicature Acts do not otherwise alter existing Laws, or lay down new rules of construction, but simply provide a better administration of existing Laws, and a more uniform mode of procedure (*f*). Procedure.

Starting with these general views of the Acts which we offer at the risk of criticism, we will endeavour to explain some of those important provisions which so materially affect the future administration of our Laws. The reforms effected by the Legislature are, indeed, gigantic; and the revered judge and lawyer, as well as the practitioner, will each have, to a great extent, to begin afresh, to throw aside many of his prejudices, and to apply his mind with steadiness and zeal to the altered condition in which he is now placed. Under these circumstances, prudence dictates reserve in a writer; whilst a lenient critic will do no injustice to his efforts.

The Supreme Court of Judicature was first intended to consist of two permanent divisions—the High Court of Justice and the Court of Appeal (*g*), but there is an intermediate Court of Appeal provided by the Amendment Act of 1875 (*h*), and the Final Court of Appeal, instituted under the 1873 Act (*i*), and which was to supersede the jurisdiction of the House of Lords and the Judicial Committee of the Privy Council, is suspended and kept in abeyance for the period of one year (*k*), with the intention of reconsidering the constitution of that important tri- Courts of Appeal.

(*e*) 33 & 37 Vict. c. 66, s. 25, sub-s. 11, post, p. 115.

(*f*) 36 & 37 Vict. c. 66, ss. 25, 56–76.

(*g*) 36 & 37 Vict. c. 66, ss. 3, 4.

(*h*) 38 & 39 Vict. c. 77, s. 4.

(*i*) 36 & 37 Vict. c. 66, ss. 4, 6, 18, 20.

(*k*) 38 & 39 Vict. c. 77, s. 2, post, p. 157.



bunal. For the present, therefore, we may dismiss from our consideration the Courts of Appeal, the reconstruction of which depend upon future legislation.

High  
Court of  
Justice.

The High Court of Justice, which is divided into different branches for administrative purposes (*l*), is to be a Superior Court of Record, and is to comprise all the Superior Courts of Common Law and Equity, including the Central Criminal Court, and to exercise all the jurisdiction (except as otherwise provided) which had previously belonged to those Courts when sitting as judges in Court or Chambers, and whether in pursuance of any Statute, Law, or recognised Custom (*m*). The London Court of Bankruptcy, which was first intended to form part of the Supreme Court of Judicature, is to continue an independent tribunal (*n*).

Exclusive  
jurisdic-  
tion.

But that there may not be any sudden transition of business from the existing Courts to the newly constituted Court, it is provided (*o*) that all causes and matters then pending, or in respect of which exclusive jurisdiction had been previously given to any Court, or a Judge thereof, shall be assigned to and belong to that Court (*o*), and be still exercised by such Judge (*p*). Enlarged powers are vested in the Court for directing causes and matters, without consent of the parties, to be tried before Referees and Assessors, to be specially appointed for that purpose (*q*); and this is one of the greatest inroads on the old system of trial by jury which has been made in modern times. In other respects trial by jury, is still retained (*q*).

Rules and  
orders.

By the 1873 Act, it was provided that the rules contained in the schedule to that Act were to be read and taken as part of that Act (*r*), although they might be altered by the general authority conferred upon the Judges to make other and additional rules (*s*); but, except so far as altered by the Act or Rules, all forms and methods of procedure which were previously in force, and which were not

(*l*) 36 & 37 Vict. c. 66, ss. 31, 32.

(*m*) 36 & 37 Vict. c. 66, ss. 3, 4, 5, 12, 16, and post, p. 101.

(*n*) 38 & 39 Vict. c. 77, s. 9, and Sched. (II.) of Act, post, p. 157.

(*o*) 36 & 37 Vict. c. 66, ss. 12, 22, 34; ante, p. 24, and post, chaps. iv., v.

(*p*) 36 & 37 Vict. c. 66, s. 17; and

post, chap. iv.

(*q*) 36 & 37 Vict. c. 66, ss. 46, 56–59, 83–85; 38 & 39 Vict. c. 77, ss. 20, 22, post, chap. v.

(*r*) 36 & 37 Vict. c. 66, s. 69.

(*s*) 36 & 37 Vict. c. 66, ss. 23, 68, 69, 74.



inconsistent therewith, might continue to be used and practised in the Supreme Court (*t*); and in respect of criminal matters, it was provided that the present forms were to continue and be used (*u*). The schedule to the Act contained Rules of Procedure and Rules of Court, and other forms of procedure were afterwards provided under the provisions of the Act, but it is unnecessary to refer to them more at length, as they have all been superseded by other rules and forms comprised in and annexed to the Act of 1875 (*x*).

The Act of 1875 provides that the Rules of Court in the first schedule to the Act are to come into operation at the commencement of the Act, but such rules may be altered under the general powers of the Act (*y*) for making further and additional rules (*z*); and it is expressly provided that all rules and orders in force in the Court of Probate, the Court for Divorce and Matrimonial Causes, and the Admiralty Court, and appeals from bankruptcy, except so far as varied by the first schedule, or by Rules of Court made by Order in Council before the commencement of the Act, are to remain and be used until altered by other rules made after the commencement of the Act (*a*), and the forms of procedure in any of the other Courts when not inconsistent with this Act, have received the same statutory recognition, and are to be preserved (*b*).

The first schedule to the Act (1875), which contains the Rules of Court, does vary more or less the existing procedure in all the Courts; but these rules, though establishing very great changes in practice and pleading, do not abrogate the old rules, but expressly enact that, "where no other provision is made by the Act, or these rules, the present procedure and practice remain in force." This provision is very inconvenient, as it entails the necessity of continually referring to the old practice to see whether and how far it is altered; but, having been made, it is rather extraordinary to find that many of the new rules

(*t*) 36 & 37 Vict. c. 66, s. 73.

(*u*) 36 & 37 Vict. c. 66, ss. 47, 71; see also s. 19, and Order lxii. of 38 & 39 Vict. c. 77.

(*x*) 38 & 39 Vict. c. 77, ss. 16, 17, and Sched. II.

(*y*) 38 & 39 Vict. c. 77, ss. 16, 17, 24, 25.

(*z*) Sec. 17.

(*a*) Sec. 18.

(*b*) Sec. 21.



Rules and  
Orders.

are simply re-enactments, in the same or similar words, of many provisions in the Common Law Procedure Acts, 1852 and 1854, and the Rules of Court framed under them. Why it should be thought necessary to re-enact some provisions, and leave others in force by merely not contradicting them, it is difficult to say.

Writ of  
Summons.

Among other changes, all actions at Law and suits in Equity, and indeed proceedings in every division of the High Court, except the Matrimonial and Divorce Division, which previously had been commenced by writ, bill, information, or citation, as the case might be, are now in every instance to be commenced by writ of summons only (*c*). In the Probate and Admiralty Division, an affidavit is to be filed previously to the issuing of the writ (*d*), and a particular mode of service of writ in Admiralty actions is provided (*e*).

It is also provided that the plaintiff may join together in one suit almost as many causes of action as he chooses, subject to a power in the Court or a judge to order separate trials if they cannot be conveniently tried together (*f*). As, however, it is expressly enacted (*g*) that no cause shall be assigned to the Probate, Admiralty, or Divorce Division of the High Court, which would not before the passing of the Judicature Acts have been triable in the Probate, Admiralty, and Divorce Courts respectively, it would seem that no ordinary causes of action can be joined with suits of this nature.

Pleadings.

Rules of pleading are substituted for those now used in the Court of Chancery, Courts of Common Law, Admiralty, and Probate, and it is provided that each pleading shall contain a concise statement of the material facts upon which the party pleading intends to rely (*h*). Pleadings may be amended (*i*), and pleading matters arising after the commencement and pending the action are provided for (*k*).

(*c*) Sched. I., Order i.; post, chap. v.

(*d*) Sched. I., Order v., Rules 10, 11; post, chap. v.

(*e*) Sched. I., Order ix., Rules 9-12; post, chap. v.

(*f*) 38 & 39 Vict. c. 77, Sched. I., Order xvii.

(*g*) 38 & 39 Vict. c. 77, s. 11, sub-s. 3.

(*h*) Sched. I., Order xix.

(*i*) Sched. I., Order xxvii.

(*k*) Sched. I., Order xx.



The plaintiff may, before reply, discontinue proceedings Pleadings. by notice and upon payment of costs, but not afterwards without leave, and the defendant, by leave of a Judge, may withdraw any defence set up by him (*l*).

The present forms of pleading, as has been already observed (*m*), seem framed on the model of those used in the Court of Admiralty, and the object of the Legislature seems to have been to compel each party to give to the other, the fullest possible information as to the real nature of his claim or defence, as the case may be. Common counts, and the general issue when pleaded by way of defence, are practically abolished, even in the simplest cases; for instance, the plaintiff, instead of suing for "money received" merely, will state his claim to be for "money received by the defendant as collector for the "plaintiff," or "for fees received by the defendant under "colour of the office of —," or "for a return of money "overcharged for the carriage of goods by railway" (*n*), as the case may be. The defendant, also, instead of pleading "never indebted" in answer to a claim for goods sold, will have to plead that he never ordered the goods in question, that they were not delivered to him, that they were not equal to sample, &c.

Again, a defendant will be able to set off, by way of counter claim, any right or claim, whether in damages or not, which would otherwise only be matter for a cross action, subject to a power in the Court or a judge to prevent his doing so should it appear that such counter claim cannot be conveniently tried in the pending action (*o*). There are other provisions enabling a defendant to raise Third parties. questions not only between the plaintiff and himself, but also between himself and other persons jointly with the plaintiff, for which purpose such other persons may be cited, and the whole matter in dispute settled in one action (*p*). It is scarcely necessary to observe the wonderful saving in expense and diminution of litigation

(*l*) Sched. I., Order xxiii.

(*m*) Ante, p. 19.

(*n*) 38 & 39 Vict. c. 77, Sched. I., App. A., Part II., s. 2; post, chap. v.

(*o*) 38 & 39 Vict. Sched. I., Order xix., Rule 3; post, chap. v.

(*p*) 38 & 39 Vict. Sched. I., Order xxii., Rules 5-9; post, chap. v.



which these provisions will cause, together with others which will be found in their place in this Chapter.

Evidence.

With respect to evidence at the trial, it will be found that as far as respects the Common Law Divisions of the High Court and the Probate Division with regard to contentious business, there is little, if any, difference made in the previous practice, with the exception that in certain cases the Court, or a judge, may order any particular fact or facts to be proved by affidavit (*q*).

The fact, however, that in all ordinary actions (unless otherwise agreed upon or ordered by a judge) the evidence is to be given *vivâ voce* in Court, will introduce a most material difference in the Chancery Division, where such practice has been most unusual; and in the Admiralty Division, where it has been by no means universal.

Interrogatories.

A most important improvement has been made, however, with regard to the power of obtaining evidence before the trial by means of administering interrogatories, which power can now be exercised by either party without leave, at any time before the close of the pleadings (*r*); while, at the same time, greater facilities are given both for the discovery and the inspection of documents.

The law with respect to new trials is very much what it was previously, with this important and beneficial exception, that a new trial is not to be granted on the ground of misdirection or the improper reception or rejection of evidence, unless it appears that some substantial miscarriage has been caused thereby (*s*).

Bills of exception, and all proceedings in error are now abolished (*t*), except to a limited extent, though appeals still remain to the Court of Appeal (*u*). This Court was originally intended to entirely supersede the judicial functions both of the House of Lords and of the Privy Council, but, as was stated earlier in this chapter (*x*), the portion

(*q*) 38 & 39 Vict. c. 77, Sched. I., Orders xxxvii. and xxxviii.; post, chap. v.

(*r*) 38 & 39 Vict. c. 77, Sched. I., Order xxxi.; post, chap. v.

(*s*) 38 & 39 Vict. c. 77, Sched. I.,

Order xxxix.; post, chap. v.

(*t*) 38 & 39 Vict. c. 77, sec. 22, Sched. I., Order lviii., Rules 1, 2.

(*u*) 36 & 37 Vict. c. 66, s. 18; 38 & 39 Vict. c. 77, s. 4.

(*x*) Ante, p. 83.



of the Judicature Act, 1873, enacting this has been suspended till November, 1876 (y).

The schedule further provides that nothing in the Rules shall affect the practice or procedure in criminal proceedings, proceedings on the Crown side of the Queen's Bench Division, the Revenue side of the Exchequer Division, or for Divorce or other Matrimonial Causes (z); and the last-mentioned order (LXII.) may not be inconsistent with Orders XIX., XX., and XXIII. before referred to.

Appendix A. to the first Schedule contains forms and modes of procedure respecting Writs of Summons, the indorsement and service thereof (a). The form of the writ is the same in all the Divisions of the Court except in Admiralty (b). Appendix.

Appendix B. contains Forms of Notices by defendants to third parties; Forms of Admissions and respecting payment of money into Court; also in reference to Documents and Interrogatories, Affidavits of Scripts, &c. (c).

Appendix C. contains Forms of Statement in various claims, shewing in which Division of the Court they may or must be entered (d); and, as a further guide to the practitioner, we have, in a subsequent Chapter in the volume, settled additional forms of proceeding for each Division of the Court, in ordinary disputes which occur in daily life, and which are most likely to form the subject of adjudication in the newly-constituted Court (e).

Appendix D. contains various Forms of Judgment.

Appendix E. and F., Forms of Præcipe and Forms of Writs of Fieri Facias, Elegit, Venditioni Exponas, Fieri Facias de Bonis Ecclesiasticis, Sequestration, Writs of Possession, and Delivery and Attachment.

The second schedule to the Act (1875) repeals 6 Geo. 4, c. 84, s. 7; and several sections of the 36 & 37 Vict. c. 66, post, p. 91.

We shall now proceed, in the next two chapters, to set out *verbatim* the Acts of 1873 and 1875, with the rules, orders, and forms of procedure annexed thereto; and give

(y) 38 & 39 Vict. c. 77, s. 2; and ante, p. 83.

(z) Sched. I., Order lxii.; and ante, p. 85.

(a) See post, chap. v.

(b) See ante, p. 86, and post, chap. v.

(c) See post, chap. v.

(d) App. C.; post, chap. v.

(e) See post, chap. vi.



such references and authorities as may seem necessary for explaining the provisions of the Acts, and indicating the changes thereby effected in the administration of the laws, and the forms of procedure of the newly-constituted Supreme Court.



## CHAPTER IV.

## THE SUPREME COURT OF JUDICATURE ACT, 1873.

36 &amp; 37 VICT. c. 66.

*A verbatim copy of the Act, with explanatory observations, authorities, and cases cited in reference to the principal provisions and alterations thereby effected, together with the amendments made by the Act of 1875.*

*Short title of Act—Commencement thereof.*

## PART I.

*Constitution and Judges of Supreme Court—Union of Existing Courts into one Supreme Court—Division of the Court into a High Court of Justice and Court of Appeal—Constitution of the Courts—Jurisdiction of the Judges—Their Qualifications—Rights—Tenure of Office—Resignations—Salaries—Pensions.*

*Pages 92–100*

## PART II.

*Jurisdiction and Law—Jurisdiction of the Courts and Judges—Appeals—House of Lords and Privy Council—Transfer of Pending Business—Law and Equity to be concurrently administered—Declaration of the Law respecting—Insolvent Estates—Statutes of Limitation and Trusts—Equitable Waste—Merger—Suits by Mortgagors—Assignments of Debts and Choses in Action—Contracts—Injunctions and Receivers—Collisions at Sea—Infants—Rules of Equity to prevail . . . . .*

*Pages 100–115*

## PART III.

*Sittings and Distribution of Business—Abolition of Terms—Vacation—Jurisdiction of Judges on Circuit—Sittings for London and Middlesex—Divisions of High Court of Justice—Rules of Court in reference thereto—Assignment of certain Business to Particular Divisions—Q. B., C. P., and Ex. Divisions—Chancery—Probate, Divorce, and Admiralty—Election Petitions—Appeals from Inferior Courts—Cases and Points Reserved—Crown Cases Reserved—Motions for New Trials—Practice in Chambers—Appeals generally.*

*Pages 116–133*

## PART IV.

*Trial and Procedure—Referees and Assessors—District Registries—The Provisions of 30 & 31 Vict. c. 142, ss. 5, 7, 8, and 10 applicable to the High Court of Justice—Rules of Court and Rules in Schedule—Rules of Probate, Divorce, Admiralty—Bankruptcy—Criminal Procedure—Juries—Saving of Existing Rules and Procedure—New Rules . . . . .*

*Pages 133–142*



## PART V.

*Officers and Offices—Transfer of Existing Staff to Supreme Court—Lancaster and Durham—Personal Officers of Judges—Status of Officers—Commissioner to administer Oaths—Official Referees—Salaries and Pensions of Officers—Patronage—Solicitors and Attorneys . . . . . Pages 148–151*

## PART VI.

*Jurisdiction of Inferior Courts—Powers of Her Majesty in Council in reference thereto—Equity and Admiralty Jurisdiction—Counter-claims—Rules of Court under this Act to apply to Inferior Courts . . . . . Pages 151–153*

## PART VII.

*Miscellaneous Provisions—Transfer of Books and Papers—Circuits—Lord Chancellor's Office and Position—Chancellor of Lancaster—Chancellor of the Exchequer—Sheriffs—Lord Treasurer and Receipt of Exchequer—Provision as to Great Seal being in Commission—Commissions of Assize in Courts Palatine—Interpretation of Terms . . . . . Pages 153–156*

## SCHEDULE.

*Repealed by 38 & 39 Vict. c. 77, s. 33, post, chap. v., p. 157.*

A.D. 1873. *An Act for the constitution of a Supreme Court, and for other purposes relating to the better Administration of Justice in England; and to authorise the transfer to the Appellate Division of such Supreme Court of the Jurisdiction of the Judicial Committee of Her Majesty's Privy Council.*

[5th August, 1873.]

Whereas it is expedient to constitute a Supreme Court, and to make provision for the better administration of justice in England:

And whereas it is also expedient to alter and amend the law relating to the Judicial Committee of Her Majesty's Privy Council:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

## PRELIMINARY.

Short title. 1. This Act may be cited for all purposes as the "Supreme Court of Judicature Act, 1873."



2. This Act, except any provision thereof which is declared to take effect on the passing of this Act, shall commence and come into operation on the second day of November, 1874.

Commence-  
ment of  
Act.

## PART I.

### CONSTITUTION AND JUDGES OF SUPREME COURT.

3. From and after the time appointed for the commencement of this Act, the several Courts hereinafter mentioned (that is to say), the High Court of Chancery of England, the Court of Queen's Bench, the Court of Common Pleas at Westminster, the Court of Exchequer, the High Court of Admiralty, the Court of Probate, the Court for Divorce and Matrimonial Causes, and the London Court of Bankruptcy, shall be united and consolidated together, and shall constitute, under and subject to the provisions of this Act, one Supreme Court of Judicature in England.

Union of  
existing  
Courts &  
into one  
Supreme  
Court.

The Court of Bankruptcy is now omitted from this list by the 9th section of the Judicature Act, 1875, though it preserves the appeal from that Court to the Court of Appeal, as enacted by the 18th section of this Act, sub-sect. 1, *post*, p. 102.

4. The said Supreme Court shall consist of two permanent Divisions, one of which, under the name of "Her Majesty's High Court of Justice," shall have and exercise original jurisdiction, with such appellate jurisdiction from inferior Courts as is hereinafter mentioned, and the other of which, under the name of "Her Majesty's Court of Appeal," shall have and exercise appellate jurisdiction, with such original jurisdiction as hereinafter mentioned as may be incident to the determination of any appeal.

Division of  
Supreme  
Court into  
a Court of  
original  
and a  
Court of  
appellate  
jurisdic-  
tion.

See sec. 4 and sub-sec. 2 of sec. 9 of the Judicature Act, 1875, *post*, chap. v. p. 157.

5. Her Majesty's High Court of Justice shall be constituted as follows:—The first judges thereof shall be the Lord Chancellor, the Lord Chief Justice of England, the

Constitu-  
tion of  
High  
Court of  
Justice.



Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, the several Vice-Chancellors of the High Court of Chancery, the Judge of the Court of Probate and of the Court for Divorce and Matrimonial Causes, the several Puisne Justices of the Courts of Queen's Bench and Common Pleas respectively, the several Junior Barons of the Court of Exchequer, and the Judge of the High Court of Admiralty, except such, if any, of the aforesaid judges as shall be appointed ordinary judges of the Court of Appeal.

See sec. 8 of the Judicature Act, 1875, as to the position, salary, &c., of judge of the High Court of Admiralty, *post*, chap. v.

Subject to the provisions hereinafter contained, whenever the office of a judge of the said High Court shall become vacant, a new judge may be appointed thereto by Her Majesty by letters patent. All persons to be hereafter appointed to fill the places of the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron, and their successors respectively, shall continue to be appointed to the same respective offices, with the same precedence, and by the same respective titles, and in the same manner respectively, as heretofore. Every judge who shall be appointed to fill the place of any other judge of the said High Court of Justice shall be styled in his appointment "Judge of Her Majesty's High Court of Justice," and shall be appointed in the same manner in which the Puisne Justices and Junior Barons of the Superior Courts of Common Law have been heretofore appointed: Provided always, that if at the commencement of this Act the number of Puisne Justices and Junior Barons who shall become judges of the said High Court shall exceed twelve in the whole, no new judge of the said High Court shall be appointed in the place of any such Puisne Justice or Junior Baron who shall die or resign while such whole number shall exceed twelve, it being intended that the permanent number of judges of the said High Court shall not exceed twenty-one.



All the judges of the said Court shall have in all respects, save as in this Act is otherwise expressly provided, equal power, authority, and jurisdiction; and shall be addressed in the manner which is now customary in addressing the judges of the Superior Courts of Common Law.

The Lord Chief Justice of England for the time being shall be President of the said High Court of Justice in the absence of the Lord Chancellor.

As to number of judges see sec. 3 of the Judicature Act, 1875, *post*, p. 157.

6. Her Majesty's Court of Appeal shall be constituted as follows:—There shall be five *ex officio* judges thereof, and also so many ordinary judges (not exceeding nine at any one time) as Her Majesty shall from time to time appoint. The *ex officio* judges shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer. The first ordinary judges of the said Court shall be the existing Lords Justices of Appeal in Chancery, the existing salaried judges of the Judicial Committee of Her Majesty's Privy Council, appointed under the "Judicial Committee Act, 1871," and such three other persons as Her Majesty may be pleased to appoint by letters patent; such appointment may be made either within one month before or at any time after the day appointed for the commencement of this Act, but if made before shall take effect at the commencement of this Act.

Besides the said *ex officio* judges and ordinary judges, it shall be lawful for Her Majesty (if she shall think fit), from time to time to appoint, under Her Royal Sign Manual, as additional judges of the Court of Appeal, any persons who, having held in England the office of a judge of the Superior Courts of Westminster hereby united and consolidated, or of Her Majesty's Supreme Court hereby constituted, or in Scotland the office of Lord Justice General or Lord Justice Clerk, or in Ireland the office of Lord Chancellor or Lord Justice of Appeal, or in India the office of Chief Justice of the High Court of Judicature at Fort William in Bengal, or Madras, or Bombay, shall respectively signify in writing their willingness to serve



as such additional judges in the Court of Appeal. No such additional judge shall be deemed to have undertaken the duty of sitting in the Court of Appeal when prevented from so doing by attendance in the House of Lords, or on the discharge of any other public duty, or by any other reasonable impediment.

The ordinary and additional judges of the Court of Appeal shall be styled Lords Justices of Appeal. All the judges of the said Court shall have, in all respects, save as in this Act is otherwise expressly mentioned, equal power, authority, and jurisdiction.

Whenever the office of an ordinary judge of the Court of Appeal becomes vacant, a new judge may be appointed thereto by Her Majesty by letters patent.

The Lord Chancellor for the time being shall be President of the Court of Appeal.

This section has been repealed by the Judicature Act, 1875, and the present constitution of the Court of Appeal is regulated by sec. 4 of that Act, *post*, p. 157.

Vacancies  
by resigna-  
tion of  
judges and  
effect of  
vacancies  
generally.

7. The office of any judge of the said High Court of Justice, or of the said Court of Appeal, may be vacated by resignation in writing, under his hand, addressed to the Lord Chancellor, without any deed of surrender; and the office of any judge of the said High Court shall be vacated by his being appointed a judge of the said Court of Appeal. The said Courts respectively shall be deemed to be duly constituted during and notwithstanding any vacancy in the office of any judge of either of such Courts.

Qualifica-  
tions of  
judges.  
Not re-  
quired to be  
Serjeants-  
at-Law.

8. Any barrister of not less than ten years' standing shall be qualified to be appointed a judge of the said High Court of Justice; and any person who if this Act had not passed would have been qualified by law to be appointed a Lord Justice of the Court of Appeal in Chancery, or has been a judge of the High Court of Justice of not less than one year's standing, shall be qualified to be appointed an ordinary judge of the said Court of Appeal: Provided, that no person appointed a judge of either of the said Courts shall henceforth be required to take, or to have taken, the degree of Serjeant-at-Law.



By 14 & 15 Vict. c. 83, s. 1, a barrister of fifteen years' standing was made eligible for the appointment of Lord Justice of the Court of Appeal in Chancery.

9. All the judges of the High Court of Justice, and of the Court of Appeal respectively, shall hold their offices for life, subject to a power of removal by Her Majesty, on an address presented to Her Majesty by both Houses of Parliament. No judge of either of the said Courts shall be capable of being elected to or of sitting in the House of Commons. Every judge of either of the said Courts (other than the Lord Chancellor) when he enters on the execution of his office, shall take, in the presence of the Lord Chancellor, the oath of allegiance, and judicial oath as defined by the Promissory Oaths Act, 1868. The oaths to be taken by the Lord Chancellor shall be the same as heretofore.

Tenure of office of judges and oaths of office. Judges not to sit in the House of Commons.

This section has been repealed by the Judicature Act, 1875, and sec. 5 of that Act has been substituted for it.

10. The *ex officio* judges of the Court of Appeal shall rank in the Supreme Court in the order of their present respective official precedence. The other judges (whether ordinary or additional) of the Court of Appeal shall rank in the Supreme Court, if Peers or Privy Councillors, in the order of their respective precedence; and the rest of the judges of the Court of Appeal shall rank according to the priority of their respective appointments to be judges thereof.

Precedence of judges.

The judges of the High Court of Justice, who are not also judges of the Court of Appeal, shall rank next after the judges of the Court of Appeal, and among themselves (subject to the provisions hereinafter contained as to existing judges) according to the priority of their respective appointments.

This section has also been repealed by the Judicature Act, 1875, and sec. 6 of that Act substituted for it.

11. Every existing judge, who is by this Act made a judge of the High Court of Justice or an ordinary judge of the Court of Appeal, shall, as to tenure of office, rank,



Saving of  
rights and  
obligations  
of existing  
judges.

title, salary, pension, patronage, and powers of appointment or dismissal, and all other privileges and disqualifications, remain in the same condition as if this Act had not passed; and, subject to the change effected in their jurisdiction and duties by or in pursuance of the provisions of this Act, each of the said existing judges shall be capable of performing and liable to perform all duties which he would have been capable of performing or liable to perform in pursuance of any Act of Parliament, law, or custom if this Act had not passed. No judge appointed before the passing of this Act shall be required to act under any Commission of Assize, Nisi Prius, Oyer and Terminer, or Gaol Delivery, unless he was so liable by usage or custom at the commencement of this Act.

Therefore none of the present Equity judges, nor the present judges of the Probate, Divorce, and Admiralty Courts, will be so required.

Service as a judge in the High Court of Justice, or in the Court of Appeal, shall, in the case of an existing judge, for the purpose of determining the length of service entitling such judge to a pension on his retirement, be deemed to be a continuation of his service in the Court of which he is a judge at the time of the commencement of this Act.

Provisions have been made by the 8th section of the Judicature Act, 1875, for altering the status, salary, pension, &c., of the judge of the Court of Admiralty, under certain conditions, *post*, chap. v.

Provisions  
for extra-  
ordinary  
duties of  
judges of  
the former  
Courts.

12. If, in any case not expressly provided for by this Act, a liability to any duty, or any authority or power, not incident to the administration of justice in any Court, whose jurisdiction is transferred by this Act to the High Court of Justice, shall have been imposed or conferred by any statute, law, or custom upon the judges or any judge of any of such Courts, save as hereinafter mentioned, every judge of the said High Court shall be capable of performing and exercising, and shall be liable to perform and empowered to exercise every such duty, authority, and power, in the same manner as if this Act had not passed, and as if he had been duly appointed the successor



of a judge liable to such duty, or possessing such authority or power, before the passing of this Act. Any such duty, authority, or power, imposed or conferred by any statute, law, or custom, in any such case as aforesaid, upon the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, or the Lord Chief Baron, shall continue to be performed and exercised by them respectively, and by their respective successors, in the same manner as if this Act had not passed.

13. Subject to the provisions in this Act contained with respect to existing judges, there shall be paid the following salaries, which shall in each case include any pension granted in respect of any public office previously filled by him, to which the judge may be entitled ;

Salaries of  
future  
judges.

To the Lord Chancellor, the sums hitherto payable to him ;

To the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, the same annual sums which the holders of those offices now respectively receive ;

To each of the ordinary judges of the Court of Appeal ;  
and,

To each of the other judges of the High Court of Justice, the sum of five thousand pounds a year.

No salary shall be payable to any additional judge of the Court of Appeal appointed under this Act ; but nothing in this Act shall in any way prejudice the right of any such additional judge to any pension to which he may be by law entitled.

14. Her Majesty may, by letters patent, grant to any judge of the High Court of Justice, or to any ordinary judge of the Court of Appeal who has served for fifteen years as a judge in such Courts, or either of them, or who is disabled by permanent infirmity from the performance of the duties of his office, a pension, by way of annuity, to be continued during his life :

Retiring  
pensions of  
future  
judges of  
High Court  
of Justice,  
and ordi-  
nary judges  
of Court of  
Appeal.

In the case of the Lord Chief Justice of England, the



Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, the same amount of pension which at present might under the same circumstances be granted to the holder of the same office :

In the case of any ordinary judge of the Court of Appeal or any other judge of the High Court of Justice, the same amount of pension which at present might under the same circumstances be granted to a puisne justice of the Court of Queen's Bench.

Salaries  
and pen-  
sions how  
to be paid.

15. Subject to the provisions in this Act contained with respect to existing judges, the salaries, allowances, and pensions payable to the judges of the High Court of Justice, and the ordinary judges of the Court of Appeal respectively, shall be charged on and paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, or the growing produce thereof: such salaries and pensions shall grow due from day to day, but shall be payable to the persons entitled thereto, or to their executors or administrators, on the usual quarterly days of payment, or at such other periods in every year as the Treasury may from time to time determine.

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## PART II.

### JURISDICTION AND LAW.

Jurisdic-  
tion of  
High Court  
of Justice.

16. The High Court of Justice shall be a Superior Court of Record, and, subject as in this Act mentioned, there shall be transferred to and vested in the said High Court of Justice the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any of the Courts following; (that is to say,)

1. The High Court of Chancery, as a Common Law Court, as well as a Court of Equity, including the jurisdiction of the Master of the Rolls, as a judge or master of the Court of Chancery, and any



jurisdiction exercised by him in relation to the Court of Chancery as a Common Law Court;

2. The Court of Queen's Bench;
3. The Court of Common Pleas at Westminster;
4. The Court of Exchequer, as a Court of Revenue, as well as a Common Law Court;
5. The High Court of Admiralty;
6. The Court of Probate;
7. The Court for Divorce and Matrimonial Causes;
8. The London Court of Bankruptcy;
9. The Court of Common Pleas at Lancaster;
10. The Court of Pleas at Durham;
11. The Courts created by Commissions of Assize, of Oyer and Terminer, and of Gaol Delivery, or any of such commissions:

The jurisdiction by this Act transferred to the High Court of Justice shall include (subject to the exceptions hereinafter contained) the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any one or more of the judges of the said Courts, respectively, sitting in Court or Chambers, or elsewhere, when acting as judges or a judge, in pursuance of any statute, law, or custom, and all powers given to any such Court, or to any such judges or judge, by any statute; and also all ministerial powers, duties, and authorities, incident to any and every part of the jurisdictions so transferred.

The Court of Bankruptcy is not now a part of the High Court of Justice, nor is its jurisdiction transferred to that Court. See sec. 9 of the Judicature Act, 1875, *post*, p. 157. The Court of Appeal is, however, the Court to which bankruptcy appeals will be taken. See *post*, p. 102, and observations, *ante*, pp. 84, 93.

The Central Criminal Court, although not specifically mentioned, is included in sub-sec. 11 of this section. See *ante*, p. 84. As to the other Courts, see *ante*, pp. 14-42.

17. There shall not be transferred to or vested in the said High Court of Justice, by virtue of this Act,—
1. Any appellate jurisdiction of the Court of Appeal in Chancery, or of the same Court sitting as a Court of Appeal in Bankruptcy:

Jurisdiction not transferred to High Court.



2. Any jurisdiction of the Court of Appeal in Chancery of the County Palatine of Lancaster :
3. Any jurisdiction usually vested in the Lord Chancellor or in the Lords Justices of Appeal in Chancery, or either of them, in relation to the custody of the persons and estates of idiots, lunatics, and persons of unsound mind :
4. Any jurisdiction vested in the Lord Chancellor in relation to grants of letters patent, or the issue of commissions or other writings, to be passed under the Great Seal of the United Kingdom :
5. Any jurisdiction exercised by the Lord Chancellor in right of or on behalf of Her Majesty as visitor of any college, or of any charitable or other foundation :
6. Any jurisdiction of the Master of the Rolls in relation to records in London or elsewhere in England.

As to the jurisdiction of the Lords Justices in respect to lunatics, see sec. 7 of the Judicature Act, 1875, *post*, chap. v., and observations, *ante*, pp. 15, 16.

Jurisdiction transferred to Court of Appeal.

18. The Court of Appeal established by this Act shall be a Superior Court of Record, and there shall be transferred to and vested in such Court all jurisdiction and powers of the Courts following ; (that is to say)

1. All jurisdiction and powers of the Lord Chancellor and of the Court of Appeal in Chancery, in the exercise of his and its appellate jurisdiction, and of the same Court as a Court of Appeal in Bankruptcy :
2. All jurisdiction and powers of the Court of Appeal in Chancery of the county palatine of Lancaster, and all jurisdiction and powers of the Chancellor of the duchy and county palatine of Lancaster when sitting alone or apart from the Lords Justices of Appeal in Chancery as a judge of rehearing or appeal from decrees or orders of the Court of Chancery of the county palatine of Lancaster :



3. All jurisdiction and powers of the Court of the Lord Warden of the Stannaries assisted by his assessors, including all jurisdiction and powers of the said Lord Warden when sitting in his capacity of judge:
4. All jurisdiction and powers of the Court of Exchequer Chamber:
5. All jurisdiction vested in or capable of being exercised by Her Majesty in Council, or the Judicial Committee of Her Majesty's Privy Council, upon appeal from any judgment or order of the High Court of Admiralty, or from any order in lunacy made by the Lord Chancellor, or any other person having jurisdiction in lunacy.

See Judicature Act, 1875, sec. 4, *post*, chap. v., and observations, *ante*, pp. 15, 18, 93-5.

19. The said Court of Appeal shall have jurisdiction and power to hear and determine appeals from any judgment or order, save as hereinafter mentioned, of Her Majesty's High Court of Justice, or of any judges or judge thereof, subject to the provisions of this Act, and to such Rules and Orders of Court for regulating the terms and conditions on which such appeals shall be allowed, as may be made pursuant to this Act.

Appeals  
from High  
Court.

For all the purposes of and incidental to the hearing and determination of any appeal within its jurisdiction, and the amendment, execution, and enforcement of any judgment or order made on any such appeal, and for the purpose of every other authority expressly given to the Court of Appeal by this Act, the said Court of Appeal shall have all the power, authority, and jurisdiction by this Act vested in the High Court of Justice.

20. No error or appeal shall be brought from any judgment or order of the High Court of Justice, or of the Court of Appeal, nor from any judgment or order, subsequent to the commencement of this Act, of the Court of Chancery of the county palatine of Lancaster, to the House of Lords or to the Judicial Committee of Her Majesty's Privy Council; but nothing in this Act shall

No appeal  
from High  
Court or  
Court of  
Appeal to  
House of  
Lords, or  
Judicial  
Com-  
mittee.



prejudice any right existing at the commencement of this Act to prosecute any pending writ of error or appeal, or to bring error or appeal to the House of Lords, or to Her Majesty in Council, or to the Judicial Committee of the Privy Council, from any prior judgment or order of any Court whose jurisdiction is hereby transferred to the High Court of Justice or to the Court of Appeal.

See Judicature Act, 1875, sec. 2, *post*, chap. v., and observations, *ante*, pp. 15, 18, 93-5, 103.

Power to transfer jurisdiction of Judicial Committee by Order in Council.

21. It shall be lawful for Her Majesty, if she shall think fit, at any time hereafter by Order in Council to direct that all appeals and petitions whatsoever to Her Majesty in Council which according to the laws now in force ought to be heard by or before the Judicial Committee of Her Majesty's Privy Council, shall from and after a time to be fixed by such order, be referred for hearing to and be heard by Her Majesty's Court of Appeal; and from and after the time fixed by such order, all such appeals and petitions shall be referred for hearing to and be heard by the said Court of Appeal accordingly, and shall not be heard by the said Judicial Committee; and for all the purposes of and incidental to the hearing of such appeals or petitions, and the reports to be made to Her Majesty thereon, and all orders thereon to be afterwards made by Her Majesty in Council, and also for all purposes of and incidental to the enforcement of any such orders as may be made by the said Court of Appeal or by Her Majesty, pursuant to this section (but not for any other purpose), all the power, authority, and jurisdiction now by law vested in the said Judicial Committee shall be transferred to and vested in the said Court of Appeal.

The Court of Appeal, when hearing any appeals in ecclesiastical causes which may be referred to it in manner aforesaid, shall be constituted of such and so many of the judges thereof, and shall be assisted by such assessors being archbishops or bishops of the Church of England, as Her Majesty, by any general rules made with the advice of the judges of the said Court, or any five of them (of whom the Lord Chancellor shall be one), and of the arch-



bishops and bishops who are members of Her Majesty's Privy Council, or any two of them (and which general rules shall be made by Order in Council), may think fit to direct: Provided that such rules shall be laid before each House of Parliament within forty days of the making of the same, if Parliament be then sitting, or if not, then within forty days of the commencement of the then next ensuing session; and if an address is presented to Her Majesty by either House of Parliament within the next subsequent forty days on which the said House shall have sat, praying that any such rules may be annulled, Her Majesty may thereupon by Order in Council annul the same; and the rules so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

See note to sec. 20, *ante*, p. 104.

22. From and after the commencement of this Act the several jurisdictions which by this Act are transferred to and vested in the said High Court of Justice and the said Court of Appeal respectively shall cease to be exercised, except by the said High Court of Justice and the said Court of Appeal respectively, as provided by this Act; and no further or other appointment of any judge to any Court whose jurisdiction is so transferred shall be made except as provided by this Act: provided that in all causes, matters, and proceedings whatsoever which shall have been fully heard, and in which judgment shall not have been given, or having been given shall not have been signed, drawn up, passed, entered, or otherwise perfected at the time appointed for the commencement of this Act, such judgment, decree, rule, or order may be given or made, signed, drawn up, passed, entered, or perfected respectively, after the commencement of this Act, in the name of the same Court, and by the same judges and officers, and generally in the same manner, in all respects as if this Act had not passed; and the same shall take effect, to all intents and purposes, as if the same had been duly perfected before the commencement of this Act;

Transfer of  
pending  
business.



and every judgment, decree, rule, or order of any Court whose jurisdiction is hereby transferred to the said High Court of Justice or the said Court of Appeal, which shall have been duly perfected at any time before the commencement of this Act, may be executed and enforced, and, if necessary, amended or discharged by the said High Court of Justice and the said Court of Appeal respectively, in the same manner as if it had been a judgment, decree, rule, or order of the said High Court or of the said Court of Appeal; and all causes, matters, and proceedings whatsoever, whether civil or criminal, which shall be pending in any of the Courts whose jurisdiction is so transferred as aforesaid at the commencement of this Act, shall be continued and concluded, as follows (that is to say), in the case of proceedings in Error or on Appeal, or of proceedings before the Court of Appeal in Chancery, in and before Her Majesty's Court of Appeal; and, as to all other proceedings, in and before Her Majesty's High Court of Justice. The said Courts respectively shall have the same jurisdiction in relation to all such causes, matters, and proceedings as if the same had been commenced in the said High Court of Justice, and continued therein (or in the said Court of Appeal, as the case may be) down to the point at which the transfer takes place; and, so far as relates to the form and manner of procedure, such causes, matters, and proceedings, or any of them, may be continued and concluded, in and before the said Courts respectively, either in the same or the like manner as they would have been continued and concluded in the respective Courts from which they shall have been transferred as aforesaid, or according to the ordinary course of the said High Court of Justice and the said Court of Appeal respectively (so far as the same may be applicable thereto), as the said Courts respectively may think fit to direct.

See sec. 42, as to the transfer of pending business in the Chancery, Probate, Admiralty, and Divorce Courts, *post*, p. 127.

Rules as to  
exercise of  
jurisdiction.

23. The jurisdiction by this Act transferred to the said High Court of Justice and the said Court of Appeal re-



spectively shall be exercised (so far as regards procedure and practice) in the manner provided by this Act, or by such Rules and Orders of Court as may be made pursuant to this Act; and where no special provision is contained in this Act or in any such Rules or Orders of Court with reference thereto, it shall be exercised as nearly as may be in the same manner as the same might have been exercised by the respective Courts from which such jurisdiction shall have been transferred, or by any of such Courts.

The rules now in force are appended to the Act of 1875, those in the schedule to this Act having been repealed, 38 & 39 Vict. c. 77, ss. 16, 17, and 2nd schedule of that Act, *post*, chap. v. p. 157.

24. In every civil cause or matter commenced in the High Court of Justice law and equity shall be administered by the High Court of Justice and the Court of Appeal respectively according to the rules following:

Law and equity to be concurrently administered.

1. If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, which heretofore could only have been given by a Court of Equity, the said Courts respectively, and every judge thereof, shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the Court of Chancery in a suit or proceeding for the same or the like purpose properly instituted before the passing of this Act.

This does not, however, prevent a purely equitable cause commenced in one of the other divisions being transferred for determination to the Chancery Division: see secs. 33 & 34, *post*, pp. 121, 124, and 38 & 39 Vict. c. 77, s. 11, and Order LI., *post*, p. 157.

2. If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim asserted by



any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said Courts respectively, and every judge thereof, shall give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff or petitioner, as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted in that Court for the same or the like purpose before the passing of this Act.

3. The said Courts respectively, and every judge thereof, shall also have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said Courts respectively, or any judge thereof, might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim, pursuant to any Rule of Court or any Order of the Court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thence-



forth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim, as if he had been duly sued in the ordinary way by such defendant.

4. The said Courts respectively, and every judge thereof, shall recognise and take notice of all equitable estates, titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court of Chancery would have recognised and taken notice of the same in any suit or proceeding duly instituted therein before the passing of this Act.

See observations, *ante*, p. 14, and sec. 25, sub-sec. 11, *post*, p. 115.

5. No cause or proceeding at any time pending in the High Court of Justice, or before the Court of Appeal, shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if this Act had not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto: Provided always, that nothing in this Act contained shall disable either of the said Courts from directing a stay of proceedings in any cause or matter pending before it if it shall think fit; and any person, whether a party or not to any such cause or matter, who would have been entitled, if this Act had not passed, to apply to any Court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the said Courts respectively, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally, or so far as may be



necessary for the purposes of justice; and the Court shall thereupon make such order as shall be just.

6. Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Act, the said Courts respectively, and every judge thereof, shall recognise and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the Common Law or by any custom, or created by any statute, in the same manner as the same would have been recognised and given effect to if this Act had not passed by any of the Courts whose jurisdiction is hereby transferred to the said High Court of Justice.

The 2nd, 3rd, 4th, 5th, and 6th clauses provide in the most effectual manner for complete justice being done by every Court, and it will appear at once what a great extension this is on the power granted by the Common Law Procedure Act, 1854, of pleading equitable pleas, which were only allowed, as mentioned in the preceding chapter (a), in those cases, always comparatively few, where a Court of Equity would have granted an unconditional injunction. Now that each Court can do justice in itself, we see the anomalous power of a suitor being prohibited by one tribunal from bringing an action in another is at once and entirely taken away.

7. The High Court of Justice and the Court of Appeal respectively, in the exercise of the jurisdiction vested in them by this Act in every cause or matter pending before them respectively, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all

(a) Ante, p. 54; see Day's Com. Law Prac. 4th ed. pp. 328-335.



matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

The 7th clause also gives every Court a most useful power of doing justice by allowing counter claims to be tried at once before it, which formerly would only afford ground for a cross action. For further particulars on this subject, see Order XXII. of the Judicature Act, 1875, *post*, where it will be found that the defendant may set up a counter claim, affecting third persons as well as the plaintiff, and that such persons may be cited to the Court unless it appears that such claims cannot be conveniently tried at the same time as the original action.

25. And whereas it is expedient to take occasion of the union of the several Courts whose jurisdiction is hereby transferred to the said High Court of Justice to amend and declare the law to be hereafter administered in England as to the matters next hereinafter mentioned: Be it enacted as follows:

Rules of  
law upon  
certain  
points.

This section removes the very serious anomaly already referred to, that our Courts have hitherto not only exercised independent and conflicting jurisdictions, but have also administered law on totally different principles.

1. In the administration by the Court of the assets of any person who may die after the passing of this Act, and whose estate may prove to be insufficient for the payment in full of his debts and liabilities, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities proveable, and as to the valuation of annuities and future or contingent liabilities, respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person may come in under the decree or order for the administration of such estate and

Adminis-  
tration of  
assets of  
insolvent  
estates.



make such claims against the same as they may respectively be entitled to by virtue of this Act.

This section is now repealed, and slightly varying provision made, by sec. 10 of the Judicature Act, 1875. For the present law respecting the marshalling the effects of a deceased person, see Williams on Executors (7th ed.), 1713, *et seq.*; and as regards the estate of a bankrupt, see Yate Lee on Bankruptcy, 299, *et seq.*

Statutes of  
Limitation  
inappli-  
cable to  
express  
trusts.

2. No claim of a cestui que trust against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitations.

This provision, which was always held in Equity, and which has been enacted, so far as regards cases of real property, by 3 & 4 Will. 4, c. 27, s. 25, is now made universal. See Darby and Bosanquet's Statutes of Limitation, 182, *et seq.*

Equitable  
wastes.

3. An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate.

As for the distinction between legal and equitable waste, especially in the case of a tenant for life without impeachment of waste, see Spence's Equitable Jurisprudence, vol. ii. p. 371, and Haynes' Outlines of Equity, 303.

Merger.

4. There shall not, after the commencement of this Act, be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in Equity.

See Williams on Real Property, 393, for instances where Equity will restrain the application of the doctrine of Merger.

Suits for  
possession  
of land  
by mort-  
gagors.

5. A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession or to enter into the receipt of the



rents and profits thereof shall have been given by the mortgagee, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

This could not be done formerly ; a mortgagor in possession could not even bring ejectment against a tenant whose tenancy commenced before the mortgage : *Doe d. Marriott v. Edwards* (6 Car. & P. 208). See also Fisher on Mortgages, 463, *et seq.*

6. Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be, and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed), to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor : Provided always, that if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the High Court of Justice under

Assign-  
ment of  
debts and  
choses in  
action.



and in conformity with the provisions of the Acts for the relief of trustees.

The assignment of choses in action, though recognised in Equity, was formerly strictly prohibited at Law. The legal restrictions have been gradually lessened, but the assignee could only sue in the name of the assignor, the latter being compelled to allow his name to be used, on security for costs being given him. This clause prevents all unnecessary circumlocution in recovery, while carefully preventing any rights of the defendant, as to set-off or otherwise, being infringed; and in consequence by Order XVI., Rule 13, of the Judicature Act, 1875, no person (not under disability) can be made a plaintiff without his consent.

Stipulations not of the essence of contracts.

7. Stipulations in contracts, as to time or otherwise, which would not before the passing of this Act have been deemed to be or to have become of the essence of such contracts in a Court of Equity, shall receive in all Courts the same construction and effect as they would have heretofore received in Equity.

As to what stipulations are of the essence of contract in Equity, see Smith's Manual of Equity, 228-230, and cases there cited; also *Tilley v. Thomas*, L. R. 3 Ch. 61.

The words "before the passing of this Act" are to be held to mean the date of the commencement of this Act: Judicature Act, 1875, s. 10, *post*, p. 166. This is important.

Injunctions and receivers.

8. A mandamus or an injunction may be granted or a receiver appointed by an interlocutory Order of the Court in all cases in which it shall appear to the Court to be just or convenient that such Order should be made; and any such Order may be made either unconditionally or upon such terms and conditions as the Court shall think just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a



right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable.

The mode of applying for an order under this section is regulated by Orders LII. and LIV. of the Judicature Act, 1875, *post*, chap. v., Daniell's Ch. (5th ed.) vol. ii. pp. 1462, 1469.

9. In any cause or proceeding for damages arising out of a collision between two ships, if both ships shall be found to have been in fault, the rules hitherto in force in the Court of Admiralty, so far as they have been at variance with the rules in force in the Courts of Common Law, shall prevail. Damages by collisions at sea.

At Common Law, if both vessels were in fault, each owner had to bear his own loss, neither being able to recover from the other. The Admiralty rule, now made universal, is that each owner must pay the other half the damage incurred. Thus, if through the fault of both, A.'s ship, worth £10,000, and B.'s, worth £50,000, go to the bottom, the total loss, £60,000, is divided between them; A. being entitled to receive £5000 from B., and B. to receive £25,000 from A., the Admiralty Court orders A. to pay B. £20,000; thus each is damnified to the amount of £30,000. A. loses a ship worth £10,000, and is obliged to pay £20,000 to B. B. loses a ship worth £50,000, and receives £20,000, and no more, from A. See MacLachlan's Merchant Shipping (2nd ed.), 287.

10. In questions relating to the custody and education of infants the Rules of Equity shall prevail. Infants.

The difference between these Rules cannot be better shewn than in the conflicting decisions given with regard to the same infant by the Court of Queen's Bench and the Lords Justices in *Re Andrews*, L. R. 8 Q. B. 153, and *Andrews v. Salt*, L. R. 8 Ch. 622.

11. Generally in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the Rules of Equity and the Rules of the Common Law with reference to the same matter, the Rules of Equity shall prevail. Cases of conflict not enumerated.

See observations, *ante*, p. 83; Daniell's Ch. (5th ed.) pp. 185, 316, 318, 381, 470-3, 503, 541.



## PART III.

## SITTINGS AND DISTRIBUTION OF BUSINESS.

Abolition  
of terms.

26. The division of the legal year into terms shall be abolished so far as relates to the administration of justice; and there shall no longer be terms applicable to any sitting or business of the High Court of Justice, or of the Court of Appeal, or of any Commissioners to whom any jurisdiction may be assigned under this Act; but in all other cases in which, under the law now existing, the terms into which the legal year is divided are used as a measure for determining the time at or within which any act is required to be done, the same may continue to be referred to for the same or the like purpose, unless and until provision is otherwise made by any lawful authority. Subject to Rules of Court, the High Court of Justice and the Court of Appeal, and the judges thereof respectively, or any such Commissioners as aforesaid, shall have power to sit and act at any time and at any place for the transaction of any part of the business of such Courts respectively, or of such judges or Commissioners, or for the discharge of any duty which by any Act of Parliament, or otherwise, is required to be discharged during or after term.

The times for the sitting of the High Court of Justice and the Court of Appeal are now fixed by Order LXI., Rules 1 and 3, of the Judicature Act, 1875, *post*, chap. v.

Vacations.

27. Her Majesty in Council may from time to time, upon any report or recommendation of the judges by whose advice Her Majesty is hereinafter authorized to make rules before the commencement of this Act, and after the commencement of this Act upon any report or recommendation of the Council of Judges of the Supreme Court hereinafter mentioned, with the consent of the Lord Chancellor, make, revoke, or modify orders regulating the vacations to be observed by the High Court of Justice and



the High Court of Appeal, and in the offices of the said Courts respectively ; and any Order in Council made pursuant to this section shall, so long as it continues in force, be of the same effect as if it were contained in this Act ; and Rules of Court may be made for carrying the same into effect in the same manner as if such Order in Council were part of this Act. In the meantime, and subject thereto, the said vacations shall be fixed in the same manner, and by the same authority, as if this Act had not passed. This section shall come into operation immediately upon the passing of this Act.

The vacations are now fixed by Order LXI., Rules 2 and 3, of the Judicature Act, 1875, *post*, chap. v.

28. Provision shall be made by Rules of Court for the Sittings in hearing, in London or Middlesex, during vacation by vacation. judges of the High Court of Justice and the Court of Appeal respectively, of all such applications as may require to be immediately or promptly heard.

This provision is now made so far as regards judges of the High Court of Justice (but not as to judges of Appeal), by the rules appended to the Judicature Act, 1875, Order LXI., Rules 5-7, *post*, chap. v.

29. Her Majesty, by commission of assize or by any Jurisdic- other commission, either general or special, may assign to tion of any judge or judges of the High Court of Justice or other judges of persons usually named in commissions of assize, the duty High Court of trying and determining within any place or district on circuit. specially fixed for that purpose by such commission, any causes or matters, or any questions or issues of fact or of law, or partly of fact and partly of law, in any cause or matter depending in the said High Court, or the exercise of any civil or criminal jurisdiction capable of being exercised by the said High Court ; and any commission so granted by Her Majesty shall be of the same validity as if it were enacted in the body of this Act ; and any Commissioner or Commissioners appointed in pursuance of this section shall, when engaged in the exercise of any jurisdiction assigned to him or them in pursuance of this Act, be deemed to constitute a Court of the said High Court of Justice ; and, subject to any restrictions or conditions im-



posed by Rules of Court and to the power of transfer, any party to any cause or matter involving the trial of a question or issue of fact, or partly of fact and partly of law, may, with the leave of the judge or judges to whom or to whose division the cause or matter is assigned, require the question or issue to be tried and determined by a Commissioner or Commissioners as aforesaid, or at sittings to be held in Middlesex or London as hereinafter in this Act mentioned, and such question or issue shall be tried and determined accordingly.

A cause or matter not involving any question or issue of fact may be tried and determined in like manner with the consent of all the parties thereto.

As to circuits, and C. Criminal C., see the 23rd section of the Judicature Act, 1875, and secs. 11, 37, 76, and 93 of this Act, *post*, pp. 125, 142, 153, 157, and 177, and *ante*, p. 42. Assize includes C. C. C.

Sittings for trial by jury in London and Middlesex.

30. Subject to Rules of Court, sittings for the trial by jury of causes and questions or issues of fact shall be held in Middlesex and London, and such sittings shall, so far as is reasonably practicable, and subject to vacations, be held continuously throughout the year by as many judges as the business to be disposed of may render necessary. Any judge of the High Court of Justice sitting for the trial of causes and issues in Middlesex or London, at any place heretofore accustomed, or to be hereafter determined by Rules of Court, shall be deemed to constitute a Court of the said High Court of Justice.

Divisions of the High Court of Justice.

31. For the more convenient despatch of business in the said High Court of Justice (but not so as to prevent any judge from sitting whenever required in any Divisional Court, or for any judge of a different Division from his own,) there shall be in the said High Court five Divisions consisting of such number of judges respectively as hereinafter mentioned. Such five Divisions shall respectively include, immediately on the commencement of this Act, the several judges following; (that is to say,)

1. One division shall consist of the following judges; (that is to say,) the Lord Chancellor, who shall be president thereof, the Master of the Rolls, and



the Vice-Chancellors of the Court of Chancery, or such of them as shall not be appointed ordinary judges of the Court of Appeal:

2. One other Division shall consist of the following judges; (that is to say,) the Lord Chief Justice of England, who shall be president thereof, and such of the other judges of the Court of Queen's Bench as shall not be appointed ordinary judges of the Court of Appeal:
3. One other Division shall consist of the following judges; (that is to say,) the Lord Chief Justice of the Common Pleas, who shall be president thereof, and such of the other judges of the Court of Common Pleas as shall not be appointed ordinary Judges of the Court of Appeal:
4. One other Division shall consist of the following judges; (that is to say,) the Lord Chief Baron of the Exchequer, who shall be president thereof, and such of the other Barons of the Court of Exchequer as shall not be appointed ordinary judges of the Court of Appeal:
5. One other Division shall consist of two judges who, immediately on the commencement of this Act, shall be the existing judge of the Court of Probate and of the Court for Divorce and Matrimonial Causes and the existing judge of the High Court of Admiralty, unless either of them is appointed an ordinary judge to the Court of Appeal. The existing judge of the Court of Probate shall (unless so appointed) be the president of the said Division, and subject thereto the senior judge of the said Division, according to the order of precedence under this Act, shall be president.

The said five Divisions shall be called respectively the Chancery Division, the Queen's Bench Division, the Common Pleas Division, the Exchequer Division, and the Probate, Divorce, and the Admiralty Division.

For the manner in which the judicial business is to be divided among these Divisions, see sec. 34, *post*, p. 121.

Any deficiency of the number of five judges for consti-



tuting, in manner aforesaid, immediately on the commencement of this Act, any one or more of the Queen's Bench, Common Pleas, and Exchequer Divisions, may be supplied by the appointment, under Her Majesty's Royal Sign Manual, either before or after the time fixed for the commencement of this Act, of one of the puisne justices or junior Barons of any superior Court of Common Law from which no judge may be so appointed as aforesaid to the Court of Appeal, to be a judge of any Division in which such deficiency would otherwise exist. And any deficiency of the number of three Vice-Chancellors or of the two judges of the Probate and Admiralty Divisions at the time of the commencement of this Act may be supplied by the appointment of a new judge in his place in the same manner as if a vacancy in such office had occurred after the commencement of this Act.

Any judge of any of the said Divisions may be transferred by Her Majesty, under Her Royal Sign Manual, from one to another of the said Divisions.

Upon any vacancy happening among the judges of the said High Court, the judge appointed to fill such vacancy shall, subject to the provisions of this Act, and to any Rules of Court which may be made pursuant thereto, become a member of the same Division to which the judge whose place has become vacant belonged.

Power to  
alter Divi-  
sions by  
Order in  
Council.

32. Her Majesty in Council may from time to time, upon any report or recommendation of the Council of Judges of the Supreme Court hereinafter mentioned, order that any reduction or increase in the number of Divisions of the High Court of Justice, or in the number of the judges of the said High Court who may be attached to any such Division, may, pursuant to such report or recommendation, be carried into effect; and may give all such further directions as may be necessary or proper for that purpose; and such Order may provide for the abolition on vacancy of the distinction of the offices of any of the following judges, namely, the Chief Justice of England, the Master of the Rolls, the Chief Justice of the Common Pleas, and the Chief Baron of the Exchequer, which may



be reduced, and of the salaries, pensions, and patronage attached to such offices, from the offices of the other judges of the High Court of Justice, notwithstanding anything in this Act relating to the continuance of such offices, salaries, pensions, and patronage; but no such Order of Her Majesty in Council shall come into operation until the same shall have been laid before each House of Parliament for thirty days on which that House shall have sat, nor if, within such period of thirty days, an address is presented to Her Majesty by either House of Parliament, praying that the same may not come into operation. Any such Order, in respect whereof no such address shall have been presented to Her Majesty, shall, from and after the expiration of such period of thirty days, be of the same force and effect as if it had been herein expressly enacted: Provided always, that the total number of the judges of the Supreme Court shall not be reduced or increased by any such Order.

33. All causes and matters which may be commenced in, or which shall be transferred by this Act to, the High Court of Justice, shall be distributed among the several Divisions and judges of the said High Court, in such manner as may from time to time be determined by any Rules of Court, or orders of transfer, to be made under the authority of this Act; and in the meantime, and subject thereto, all such causes and matters shall be assigned to the said Divisions respectively, in the manner hereinafter provided. Every document by which any cause or matter may be commenced in the said High Court shall be marked with the name of the Division, or with the name of the judge, to which or to whom the same is assigned.

Rules of Court to provide for distribution of business.

34. There shall be assigned (subject as aforesaid) to the Chancery Division of the said Court:

Assignment of certain business to particular Divisions of High Court, subject to Rules.

1. All causes and matters pending in the Court of Chancery at the commencement of this Act:
2. All causes and matters to be commenced after the commencement of this Act, under any Act of Parliament by which exclusive jurisdiction, in respect to such causes or matters, has been given to the Court of Chancery, or to any judges or



judge thereof respectively, except appeals from County Courts :

3. All causes and matters for any of the following purposes :

The administration of the estates of deceased persons ;

The dissolution of partnerships or the taking of partnership or other accounts ;

The redemption or foreclosure of mortgages ;

The raising of portions, or other charges on land ;

The sale and distribution of the proceeds of property subject to any lien or charge ;

The execution of trusts charitable or private ;

The rectification, or setting aside, or cancellation of deeds or other written instruments ;

The specific performance of contracts between vendors and purchasers of real estates, including contracts for leases ;

The partition of sale of real estates ;

The wardship of infants and the care of infants' estates.

There shall be assigned (subject as aforesaid) to the Queen's Bench Division of the said Court :

1. All causes and matters, civil and criminal, pending in the Court of Queen's Bench at the commencement of this Act :

2. All causes and matters, civil and criminal, which would have been within the exclusive cognisance of the Court of Queen's Bench in the exercise of its original jurisdiction, if this Act had not passed.

There shall be assigned (subject as aforesaid) to the Common Pleas Divisions of the said Court :

1. All causes and matters pending in the Court of Common Pleas at Westminster, the Court of Common Pleas at Lancaster, and the Court of Pleas at Durham, respectively, at the commencement of this Act :

2. All causes and matters which would have been within the exclusive cognisance of the Court of



Common Pleas at Westminster, if this Act had not passed.

There shall be assigned (subject as aforesaid) to the Exchequer Division of the said Court:

1. All causes and matters pending in the Court of Exchequer at the commencement of this Act:
2. All causes and matters which would have been within the exclusive cognisance of the Court of Exchequer, either as a Court of Revenue or as a Common Law Court, if this Act had not passed:
3. All matters pending in the London Court of Bankruptcy at the commencement of this Act:
4. All matters to be commenced after the commencement of this Act under any Act of Parliament by which exclusive jurisdiction in respect to such matters has been given to the London Court of Bankruptcy.

There shall be assigned (subject as aforesaid) to the Probate, Divorce, and Admiralty Division of the said High Court:

1. All causes and matters pending in the Court of Probate, or in the Court for Divorce and Matrimonial Causes, or in the High Court of Admiralty, at the commencement of this Act:
2. All causes and matters which would have been within the exclusive cognisance of the Court of Probate, or the Court for Divorce and Matrimonial Causes, or of the High Court of Admiralty, if this Act had not passed.

As to those matters formerly within the exclusive jurisdiction of the Courts of Queen's Bench, Common Pleas, and Exchequer respectively, see chap. iii., *ante*, pp. 84, 122.

See also sec. 11 of the Judicature Act, 1875, *post*, p. 167.

It will be remembered that the Court of Bankruptcy is now not a part of the High Court of Justice (*b*): 38 & 39 Vict. c. 77, s. 9, *post*, p. 165.

As to costs, see Order 6 of additional Rules of Court, dated 12th August, and printed in *London Gazette* of 24th August, 1875, *post*, chap. vii.

35. Subject to any Rules of Court, and to the provisions

(*b*) *Ante*, pp. 84.



Option for  
any plain-  
tiff (subject  
to Rules)  
to choose  
in what  
Division he  
will sue.

hereinbefore contained, and to the power of transfer, every person by whom any cause or matter may be commenced in the said High Court of Justice shall assign such cause or matter to one of the Divisions of the said High Court, not being the Probate, Divorce, and Admiralty Division thereof, as he may think fit, by marking the document by which the same is commenced, with the name of such Division, and giving notice thereof to the proper officer of the Court; provided that all interlocutory and other steps and proceedings in or before the said High Court, in any cause or matter subsequent to the commencement thereof, shall be taken (subject to any Rules of Court and to the power of transfer) in the Division of the said High Court to which such cause or matter is for the time being attached; provided also, that if any plaintiff or petitioner shall at any time assign his cause or matter to any Division of the said High Court to which, according to the Rules of Court or the provisions of this Act, the same ought not to be assigned, the Court or any judge of such Division, upon being informed thereof, may on a summary application, at any stage of the cause or matter, direct the same to be transferred to the Division of the said Court to which, according to such rules or provisions, the same ought to have been assigned, or he may, if he think it expedient so to do, retain the same in the Division in which the same was commenced; and all steps and proceedings whatsoever taken by the plaintiff or petitioner, or by any other party in any such cause or matter, and all orders made therein by the Court or any judge thereof before any such transfer, shall be valid and effectual to all intents and purposes in the same manner as if the same respectively had been taken and made in the proper Division of the said Court to which such cause or matter ought to have been assigned.

This section is repealed by the second Schedule of the Judicature Act, 1875, and sec. 11 of that statute substituted for it, *post*, chap. v., and p. 167.

Power of  
transfer.

36. Any cause or matter may at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by such autho-



city and in such manner as Rules of Court may direct, from one Division or judge of the High Court of Justice to any other Division or judge thereof, or may by the like authority be retained in the Division in which the same was commenced, although such may not be the proper Division to which the same cause or matter ought, in the first instance, to have been assigned.

The rules respecting the transfer of actions will be found in the Judicature Act, 1875, Order LI., Rules 1-3, *post*, chap. v.

37. Subject to any arrangements which may be from time to time made by mutual agreement between the judges of the said High Court, the sittings for trials by jury in London and Middlesex, and the sittings of judges of the said High Court under Commissions of Assize, Oyer and Terminer, and Gaol Delivery, shall be held by or before judges of the Queen's Bench, Common Pleas, or Exchequer Division of the said High Court; provided that it shall be lawful for Her Majesty, if she shall think fit, to include in any such commission any ordinary judge of the Court of Appeal or any judge of the Chancery Division to be appointed after the commencement of this Act, or any serjeant-at-law, or any of Her Majesty's counsel learned in the law, who, for the purposes of such commission, shall have all the power, authority, and jurisdiction of a judge of the said High Court.

Sittings in  
London and  
Middlesex  
and on  
circuits.

See sec. 29, *ante*, p. 117-118; sec. 93, *post*, p. 153; and also sec. 23 of the Judicature Act, 1875, *post*, p. 174.

38. The judges to be placed on the rota for the trial of election petitions for England in each year, under the provisions of the "Parliamentary Elections Act, 1868," shall be selected out of the judges of the Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court of Justice in such manner as may be provided by any Rules of Court to be made for that purpose; and in the meantime, and subject thereto, shall be selected out of the judges of the said Queen's Bench, Common Pleas, and Exchequer Divisions of the said High Court, by the judges of such Divisions respectively, as if such Divisions

Rota of  
judges for  
election  
petitions.



had been named instead of the Courts of Queen's Bench, Common Pleas, and Exchequer respectively, in such last-mentioned Act: Provided that the judges who, at the commencement of this Act, shall be upon the rota for the trial of such petitions during the then current year, shall continue upon such rota until the end of such year, in the same manner as if this Act had not passed.

Powers of  
one or more  
judges not  
consti-  
tuting a  
Divisional  
Court.

39. Any judge of the said High Court of Justice may, subject to any Rules of Court, exercise in Court or in Chambers all or any part of the jurisdiction by this Act vested in the said High Court, in all such causes and matters, and in all such proceedings in any causes or matters, as before the passing of this Act might have been heard in Court or in Chambers respectively, by a single judge of any of the Courts whose jurisdiction is hereby transferred to the said High Court, or as may be directed or authorized to be so heard by any Rules of Court to be hereafter made. In all such cases, any judge sitting in Court shall be deemed to constitute a Court.

Divisional  
Courts of  
the High  
Court of  
Justice.

40. Such causes and matters as are not proper to be heard by a single judge shall be heard by Divisional Courts of the said High Court of Justice, which shall for that purpose exercise all or any part of the jurisdiction of the said High Court. Any number of such Divisional Courts may sit at the same time. A Divisional Court of the said High Court of Justice shall be constituted by two or three, and no more, of the judges thereof; and, except when through pressure of business or any other cause it may not conveniently be found practicable, shall be composed of three such judges. Every judge of the said High Court shall be qualified and empowered to sit in any such Divisional Courts. The president of every such Divisional Court of the High Court of Justice shall be the senior judge of those present, according to the order of their precedence under this Act.

Divisional  
Courts for  
business of  
Queen's  
Bench,  
Common

41. Subject to any Rules of Court, and in the meantime until such rules shall be made, all business belonging to the Queen's Bench, Common Pleas, and Exchequer Divisions respectively of the said High Court, which, accord-



ing to the practice now existing in the Superior Courts of Common Law, would have been proper to be transacted or disposed of by the Court sitting in banc, if this Act had not passed, may be transacted and disposed of by Divisional Courts, which shall, as far as may be found practicable and convenient, include one or more judge or judges attached to the particular Division of the said Court to which the cause or matter out of which such business arises has been assigned; and it shall be the duty of every judge of such last-mentioned Division, and also of every other judge of the High Court who shall not for the time being be occupied in the transaction of any business specially assigned to him, or in the business of any other Divisional Court, to take part, if required, in the sittings of such Divisional Courts as may from time to time be necessary for the transaction of the business assigned to the said Queen's Bench, Common Pleas, and Exchequer Divisions respectively; and all such arrangements as may be necessary or proper for that purpose, or for constituting or holding any Divisional Courts of the said High Court of Justice for any other purpose authorized by this Act, and also for the proper transaction of that part of the business of the said Queen's Bench, Common Pleas, and Exchequer Divisions respectively, which ought to be transacted by one or more judges not sitting in a Divisional Court, shall be made from time to time under the direction and superintendence of the judges of the said High Court; and in case of difference among them, in such manner as a majority of the said judges, with the concurrence of the Lord Chief Justice of England, shall determine.

42. Subject to any Rules of Court, and in the meantime until such rules shall be made, all business arising out of any cause or matter assigned to the Chancery or Probate, Divorce, and Admiralty Division of the said High Court shall be transacted and disposed of in the first instance by one judge only, as has been heretofore accustomed in the Court of Chancery, the Court of Probate and for Divorce and Matrimonial Causes, and the High Court of

Pleas, and  
Exchequer  
Divisions.

Distribu-  
tion of  
business  
among the  
judges of  
the Chan-  
cery and  
Probate,  
Divorce,  
and Admi-  
ralty Divi-



sions of  
the High  
Court.

Admiralty respectively; and every cause or matter which, at the commencement of this Act, may be depending in the Court of Chancery, the Court of Probate and for Divorce and Matrimonial Causes, and the High Court of Admiralty respectively, shall (subject to the power of transfer) be assigned to the same judge in or to whose Court the same may have been depending or attached at the commencement of this Act; and every cause or matter which after the commencement of this Act may be commenced in the Chancery Division of the said High Court shall be assigned to one of the judges thereof, by marking the same with the name of such of the said judges as the plaintiff or petitioner (subject to the power of transfer) may in his option think fit: Provided that (subject to any Rules of Court, and to the power of transfer, and to the provisions of this Act as to trial of questions or issues by Commissioners, or in Middlesex or London), all causes and matters which, if this Act had not passed, would have been within the exclusive cognisance of the High Court of Admiralty, shall be assigned to the present judge of the said Admiralty Court during his continuance in office as a judge of the High Court.

See sec. 22, *ante*, p. 105, as to the transfer of pending business.

Divisional  
Courts for  
business  
of the  
Chancery  
Division.

43. Divisional Courts may be held for the transaction of any part of the business assigned to the said Chancery Division, which the judge, to whom such business is assigned, with the concurrence of the president of the same Division, deems proper to be heard by a Divisional Court.

Divisional  
Courts for  
business  
belonging  
to the  
Division.

44. Divisional Courts may be held for the transaction of any part of the business assigned to the Probate, Divorce, and Admiralty Division of the said High Court, which the judges of such Division, with the concurrence of the president of the said High Court, deem proper to be heard by a Divisional Court. Any cause or matter assigned to the said Probate, Divorce, and Admiralty Division may be heard at the request of the president of such Division, with the concurrence of the president of



the said High Court, by any other judge of the said High Court.

45. All appeals from Petty or Quarter Sessions, from a County Court, or from any other inferior Court, which might before the passing of this Act have been brought to any Court or judge whose jurisdiction is by this Act transferred to the High Court of Justice, may be heard and determined by Divisional Courts of the said High Court of Justice, consisting respectively of such of the judges thereof as may from time to time be assigned for that purpose, pursuant to Rules of Court, or (subject to Rules of Court) as may be so assigned according to arrangements made for the purpose by the judges of the said High Court. The determination of such appeals respectively by such Divisional Courts shall be final unless special leave to appeal from the same to the Court of Appeal shall be given by the Divisional Court by which any such appeal from an inferior Court shall have been heard.

Appeals from inferior Courts to be determined by Divisional Courts.

46. Subject to any Rules of Court, any judge of the said High Court, sitting in the exercise of its jurisdiction elsewhere than in a Divisional Court, may reserve any case, or any point in a case, for the consideration of a Divisional Court, or may direct any case, or point in a case, to be argued before a Divisional Court; and any Divisional Court of the said High Court shall have power to hear and determine any such case or point so reserved or so directed to be argued.

Cases and points may be reserved for or directed to be argued before Divisional Courts.

See sec. 22 of the Judicature Act, 1875, providing that nothing shall take away the right of parties to have issues tried by a jury, or the right of tendering exceptions to the judge's ruling, *post*, p. 174.

47. The jurisdiction and authorities in relation to questions of law arising in criminal trials which are now vested in the justices of either Bench and the Barons of the Exchequer by the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter seventy-eight, intituled "An Act for the further amendment of the administration of the Criminal Law," or

Provision for Crown Cases Reserved.



any Act amending the same, shall and may be exercised after the commencement of this Act by the judges of the High Court of Justice, or five of them at the least, of whom the Lord Chief Justice of England, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, or one of such chiefs at least, shall be part. The determination of any such question by the judges of the said High Court in manner aforesaid shall be final and without appeal; and no appeal shall lie from any judgment of the said High Court in any criminal cause or matter, save for some error of law apparent upon the record, as to which no question shall have been reserved for the consideration of the said judges under the said Act of the eleventh and twelfth years of Her Majesty's reign.

It is expressly provided by Order LXII. of the Judicature Act, 1875, that nothing in the rules thereto appended shall affect criminal matters, *post*, chap. v.

Motions  
for new  
trials to be  
heard by  
Divisional  
Courts.

48. Every motion for a new trial of any cause or matter on which a verdict has been found by a jury, or by a judge without a jury, and every motion in arrest of judgment, or to enter judgment *non obstante veredicto*, or to enter a verdict for plaintiff or defendant, or to enter a nonsuit, or to reduce damages, shall be heard before a Divisional Court; and no appeal shall lie from any judgment founded upon and applying any verdict unless a motion has been made or other proceeding taken before a Divisional Court to set aside or reverse such verdict, or the judgment, if any, founded thereon, in which case an appeal shall lie to the Court of Appeal from the decision of the Divisional Court upon such motion or other proceeding.

This section is repealed by the second schedule of the Judicature Act, 1875. Provisions for new trials will be found in the rules appended to that Act: Order XXXIX., *post*, chap. v.

What  
Orders  
shall not  
be subject  
to Appeal.

49. No order made by the High Court of Justice or any judge thereof, by the consent of parties, or as to costs only, which by law are left to the discretion of the Court,



shall be subject to any appeal, except by leave of the Court or judge making such order.

By Order LV. appended to the Judicature Act, 1875, costs are in every case to be in the discretion of the Court, provided, nevertheless, that where any action or issue is tried by a jury in the Queen's Bench, Common Pleas, or Exchequer Divisions, costs shall follow the event as usual at present, except upon special application made and for good cause shewn, the judge before whom such action lies, or Court, shall order otherwise. The effect of this rule and the above section will be that such order will always practically be free from appeal.

As to costs, see additional Rules of Court dated 12th August, and printed in *London Gazette* of 24th August, 1875; and *post*, chap. vii.

50. Every order made by a judge of the said High Court in Chambers, except orders made in the exercise of such discretion as aforesaid, may be set aside or discharged upon notice by any Divisional Court, or by the judge sitting in Court, according to the course and practice of the Division of the High Court to which the particular cause or matter in which such order is made may be assigned; and no appeal shall lie from any such order, to set aside or discharge which no such motion has been made, unless by special leave of the judge by whom such order was made, or of the Court of Appeal.

As to discharging Orders made in Chambers.

51. Upon the request of the Lord Chancellor, it shall be lawful for any judge of the Court of Appeal, who may consent so to do, to sit and act as a judge of the said High Court, or to perform any other official or ministerial acts for or on behalf of any judge absent from illness or any other cause, or in the place of any judge whose office has become vacant, or as an additional judge of any Division; and while so sitting and acting any such judge of the Court of Appeal shall have all the power and authority of a judge of the said High Court.

Provision for absence or vacancy in the office of a judge.

52. In any cause or matter pending before the Court of Appeal, any direction incidental thereto, not involving the decision of the appeal, may be given by a single judge of the Court of Appeal; and a single judge of the Court of Appeal may at any time during vacation make any interim order to prevent prejudice to the claims of any parties

Power of a single judge in Court of Appeal.



pending an appeal as he may think fit; but every such order made by a single judge may be discharged or varied by the Court of Appeal or a Divisional Court thereof.

Divisional  
Courts of  
Court of  
Appeal.

53. Every appeal to the Court of Appeal shall be heard or determined either by the whole Court or by a Divisional Court consisting of any number, not less than three, of the judges thereof. Any number of such Divisional Courts may sit at the same time. Any appeal which for any reason may be deemed fit to be re-argued before decision or to be re-heard before final judgment may be so re-argued or re-heard before a greater number of judges if the Court of Appeal think fit so to direct.

This section is repealed by the second schedule of the Judicature Act, 1875, *post*, chap. v.

Judges not  
to sit on  
appeal  
from their  
own judg-  
ments.

54. No judge of the said Court of Appeal shall sit as a judge on the hearing of an appeal from any judgment or order made by himself or made by any Divisional Court of the High Court of which he was himself a member.

This section is repealed by sec. 4 of the Judicature Act, 1875, *post*, p. 161.

Arrange-  
ments for  
business of  
Court of  
Appeal,  
and for  
hearing  
appeals  
transferred  
from the  
Judicial  
Committee  
of the  
Privy  
Council.

55. All such arrangements as may be necessary or proper for the transaction of the business from time to time pending before the Court of Appeal, and for constituting and holding Divisional Courts thereof, shall be made by and under the direction of the president and the other ex-officio and ordinary judges of the said Court of Appeal; and if Her Majesty shall be pleased by Order in Council to direct that the hearing of such appeals and petitions to Her Majesty in Council as hereinbefore mentioned shall be referred to the said Court of Appeal, not less than one Divisional Court of the said Court of Appeal shall sit throughout the year (except during vacations) for the hearing of such of the appeals and petitions so referred as may from time to time be depending and ready for hearing, which Divisional Court shall be composed (as far as may be found practicable) of judges of the Court of Appeal who are also members of Her Majesty's Privy Council; and any member of Her Majesty's Privy Council who, having held the office of a judge in the East Indies or in



any of Her Majesty's dominions beyond the seas, shall have been appointed by Her Majesty, under the Acts relating to the Judicial Committee of the Privy Council, to attend the sittings of the said Judicial Committee, may attend the sittings of any such Divisional Court of the Court of Appeal; and with respect to the place of sitting of any such last-mentioned Divisional Court, and any attendance or service therein, or in aid of the proceedings thereof, which may be required from the Registrar or any other officer of Her Majesty's Privy Council, all such arrangements as may be necessary or proper shall be made by the Lord Chancellor, as President of the Court of Appeal, with the concurrence of the President for the time being of Her Majesty's Privy Council; and the President of Her Majesty's Privy Council shall from time to time give such directions to the Registrar and other officers of the said Privy Council as may be necessary or proper for the purpose of carrying such last-mentioned arrangements into effect.

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## PART IV.

### TRIAL AND PROCEDURE.

56. Subject to any Rules of Court and to such right as may now exist to have particular cases submitted to the verdict of a jury, any question arising in any cause or matter (other than a criminal proceeding by the Crown) before the High Court of Justice or before the Court of Appeal, may be referred by the Court or by any Divisional Court or judge before whom such cause or matter may be pending, for inquiry and report to any official or special referee, and the report of any such referee may be adopted wholly or partially by the Court, and may (if so adopted) be enforced as a judgment by the Court. The High Court or the Court of Appeal may also, in any such cause or matter as aforesaid in which it may think it expedient so

References  
and assess-  
sors.



to do, call in the aid of one or more assessors specially qualified, and try and hear such cause or matter wholly or partially with the assistance of such assessors. The remuneration, if any, to be paid to such special referees or assessors shall be determined by the Court.

Power to  
direct  
trials  
before  
Referees.

57. In any cause or matter (other than a criminal proceeding by the Crown) before the said High Court in which all parties interested who are under no disability consent thereto, and also without such consent in any such cause or matter requiring any prolonged examination of documents or accounts, or any scientific or local investigation which cannot, in the opinion of the Court or a judge, conveniently be made before a jury, or conducted by the Court through its other ordinary officers, the Court or a judge may at any time, on such terms as may be thought proper, order any question or issue of fact or any question of account arising therein to be tried either before an official referee, to be appointed as hereinafter provided, or before a special referee to be agreed on between the parties; and any such special referee so agreed on shall have the same powers and duties and proceed in the same manner as an official referee. All such trials before referees shall be conducted in such manner as may be prescribed by Rules of Court, and subject thereto in such manner as the Court or judge ordering the same shall direct.

As to the appointment of these referees, see sec. 83, *post*, p. 148.

Power of  
Referees  
and effect  
of their  
findings.

58. In all cases of any reference to or trial by referees under this Act the referees shall be deemed to be officers of the Court, and shall have such authority for the purpose of such reference or trial as shall be prescribed by Rules of Court or (subject to such rules) by the Court or judge ordering such reference or trial; and the report of any referee upon any question of fact on any such trial shall (unless set aside by the Court) be equivalent to the verdict of a jury.

The rules affecting trial by referees will be found in the Judicature Act, 1875, Order XXXVI., Rules 29-34, *post*, chap. v.



59. With respect to all such proceedings before referees and their reports, the Court, or such judge as aforesaid, shall have, in addition to any other powers, the same or the like powers as are given to any Court whose jurisdiction is hereby transferred to the said High Court with respect to references to arbitration and proceedings before arbitrators and their awards respectively, by the Common Law Procedure Act, 1854.

Powers of Court with respect to proceedings before Referees.

60. And whereas it is expedient to facilitate the prosecution in country districts of such proceedings as may be more speedily, cheaply, and conveniently carried on therein, it shall be lawful for Her Majesty, by Order in Council, from time to time to direct that there shall be district registrars in such places as shall be in such order mentioned for districts to be thereby defined, from which writs of summons for the commencement of actions in the High Court of Justice may be issued, and in which such proceedings may be taken and recorded as are hereinafter mentioned; and Her Majesty may thereby appoint that any registrar of any County Court, or any registrar or prothonotary or district prothonotary of any local Court whose jurisdiction is hereby transferred to the said High Court of Justice, or from which an appeal is hereby given to the said Court of Appeal, or any person who, having been a district registrar of the Court of Probate, or of the Admiralty Court, shall under this Act become and be a district registrar of the said High Court of Justice, or who shall hereafter be appointed such district registrar, shall and may be a district registrar of the said High Court for the purpose of issuing such writs as aforesaid, and having such proceedings taken before him as are hereinafter mentioned. This section shall come into operation immediately upon the passing of this Act.

Her Majesty may establish District Registries in the country for the Supreme Court.

This section has been amended by sec. 13 of the Judicature Act, 1875.

For the rules affecting district registrars, see Order V., Rules 1-3, and Order XXXV. *post*, pp. 168, 196, *et seq.*

By Order in Council dated 12th August, and inserted in *London Gazette* of 24th August, 1875, district registrars for numerous places have been appointed. See *post*, p. 169.



Seals of  
District  
Registries.

61. In every such district registry such seal shall be used as the Lord Chancellor shall from time to time, either before or after the time fixed for the commencement of this Act, direct, which seal shall be impressed on every writ and other document issued out of or filed in such district registry, and all such writs and documents, and all exemplifications and copies thereof, purporting to be sealed with the seal of any such district registry, shall in all parts of the United Kingdom be received in evidence without further proof thereof.

Powers of  
District  
Registrars.

62. All such district registrars shall have power to administer oaths and perform such other duties in respect of any proceedings pending in the said High Court of Justice or in the said Court of Appeal as may be assigned to them from time to time by Rules of Court, or by any special order of the Court.

Fees to be  
taken by  
District  
Registrars.

63. The Lord Chancellor, with the sanction of the Treasury, may, either before or after the commencement of this Act, fix, and may afterwards, with the like sanction, from time to time alter, a table of fees to be taken by such district registrars in respect of all business to be done under this Act; and such fees shall be received and collected by stamps, denoting in each case the amount of the fee payable. The provisions of the "Courts of Justice (Salaries and Funds) Act, 1869," as to fees to be taken by stamps, shall apply to the fees to be received and collected by stamps under this Act.

This section has been repealed by the second schedule of the Judicature Act, 1875, *post*, chap. v.

Proceed-  
ings to be  
taken in  
District  
Registries.

64. Subject to the Rules of Court in force for the time being, writs of summons for the commencement of actions in the High Court of Justice shall be issued by the district registrars when thereunto required; and unless any order to the contrary shall be made by the High Court of Justice, or by any judge thereof, all such further proceedings, including proceedings for the arrest or detention of a ship, her tackle, apparel, furniture, cargo, or freight, as may and ought to be taken by the respective parties to



such action in the said High Court down to and including entry for trial, or (if the plaintiff is entitled to sign final judgment or to obtain an order for an account by reason of the non-appearance of the defendant) down to and including final judgment, or an order for an account, may be taken before the district registrar, and recorded in the district registry, in such manner as may be prescribed by Rules of Court; and all such other proceedings in any such action as may be prescribed by Rules of Court shall be taken, and if necessary may be recorded in the same district registry.

As to writs of summons being issued out of district registries, see Order V., Rules 1-3, *post*, p. 196; and as to further proceedings in them, see Order XXXV., *post*, chap. v., and *ante*, note at p. 135.

65. Any party to an action in which a writ of summons shall have been issued from any such district registry shall be at liberty at any time to apply, in such manner as shall be prescribed by Rules of Court, to the said High Court, or to a judge in Chambers of the Division of the said High Court to which the action may be assigned, to remove the proceedings from such district registry into the proper office of the said High Court; and the Court or judge may, if it be thought fit, grant such application, and in such case the proceedings and such original documents, if any, as may be filed therein shall upon receipt of such order be transmitted by the district registrar to the proper office of the said High Court, and the said action shall thenceforth proceed in the said High Court in the same manner as if it had been originally commenced by a writ of summons issued out of the proper office in London; or the Court or judge, if it be thought right, may thereupon direct that the proceedings may continue to be taken in such district registry.

Power for  
Court to  
remove  
proceed-  
ings from  
District  
Registries.

The rule directing the manner in which application is to be made to the Court or a judge to remove an action is Order XXXV., Rule 13, *post*, chap. v.

Order XXXV., Rule 11, fixes the cases in which an action may be removed by a defendant of right without any application, and Rule 12 prescribes the manner in which this can be done, *post*, chap. v.



Accounts  
and in-  
quiries  
may be  
referred to  
District  
Registrars.

66. It shall be lawful for the Court, or any judge of the Division to which any cause or matter pending in the said High Court is assigned, if it shall be thought fit, to order that any books or documents may be produced, or any accounts taken or inquiries made, in the office of or by any such district registrar as aforesaid; and in any such case the district registrar shall proceed to carry all such directions into effect in the manner prescribed; and in any case in which any such accounts or inquiries shall have been directed to be taken or made by any district registrar, the report in writing of such district registrar as to the result of such accounts or inquiries may be acted upon by the Court, as to the Court shall seem fit.

30 & 31  
Vict. c. 142,  
ss. 5, 7, 8,  
and 10 to  
extend to  
actions in  
High  
Court.

67. The provisions contained in the fifth, seventh, eighth, and tenth sections of the County Courts Acts, 1867, shall apply to all actions commenced or pending in the said High Court of Justice in which any relief is sought which can be given in a County Court.

These sections refer to costs in actions which might have been tried in County Courts, and also to cases in which actions may be remitted from a Superior Court to a County Court. See further, as to costs, note to sec. 49, *ante*, p. 131, and *post*, chap. vii.; as to County Court costs, *ante*, p. 31.

Rules of  
Court may  
be made by  
Order in  
Council  
before com-  
mencement  
of the Act.

68. Subject to the provisions of this Act, Her Majesty may, at any time before the commencement of this Act, by and with the advice of the Lord Chancellor, the Lord Chief Justice of England, and the other judges of the several Courts intended to be united and consolidated by this Act, or of the greater number of them, (of whom the Lord Chancellor and the Lord Chief Justice of England shall be two,) cause to be prepared rules, in this Act referred to as Rules of Court, providing as follows:

1. For the regulation of the sittings of the High Court of Justice and the Court of Appeal, and of of any Divisional or other Courts thereof respectively, and of the judges of the said High Court sitting in Chambers;
2. For the regulation of circuits, including the times and places at which they are to be holden and the business to be transacted thereat;



3. For the regulation of all matters consistent with or not expressly determined by the rules contained in the schedule hereto, which, under and for the purposes of such last-mentioned rules, require to be, or conveniently may be defined or regulated by further Rules of Court;
4. And, generally, for the regulation of any matters relating to the practice and procedure of the said Courts respectively, or to the duties of the officers thereof, or to the costs of proceedings therein, or to the conduct of civil or criminal business coming within the cognisance of the said Courts respectively, for which provision is not expressly made by this Act or by the rules contained in the schedule hereto.

All Rules of Court made in pursuance of this section shall be laid before each House of Parliament within forty days next after the same are made, if Parliament is then sitting, or if not, within forty days after the then next meeting of Parliament; and if an address is presented to Her Majesty by either of the said Houses, within the next subsequent forty days on which the said House shall have sat, praying that any such rules may be annulled, Her Majesty may thereupon by Order in Council annul the same; and the rules so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same. This section shall come into operation immediately on the passing of this Act.

Rules to be laid before Parliament, and may be annulled on address from either House.

This section is repealed by the second schedule of the Judicature Act, 1875, *post*, chap. v.; see 38 & 39 Vict. c. 77, s. 17, *post*, p. 171.

69. The rules contained in the schedule to this Act (which shall be read and taken as part of this Act) shall come into operation immediately on the commencement of this Act, and, as to all matters to which they extend, shall thenceforth regulate the proceedings in the High Court of Justice and the Court of Appeal respectively, unless and until, by the authority hereinafter in that behalf provided, any of them may be altered or varied; but such rules,

Rules in Schedule to regulate procedure till changed by other rules after commencement of Act.



and also all rules to be made before the commencement of this Act, as hereinbefore mentioned, shall for all the purposes of this Act be Rules of Court capable of being annulled or altered by the same authority by which any other Rules of Court may be made, altered, or annulled after the commencement of this Act.

Rules in first schedule to 1875 Act substituted for these rules: see 38 & 39 Vict. c. 77, ss. 16, 17, *post*, p. 171, chap. v., and note at p. 141.

Rules of Probate, Divorce, Admiralty, and Bankruptcy Courts to be Rules of the High Court.

70. All Rules and Orders of Court which shall be in force in the Court of Probate, the Court for Divorce and Matrimonial Causes, the Admiralty Court, and the London Court of Bankruptcy respectively, at the time of the commencement of this Act, except so far as they are hereby expressly varied, shall remain and be in force in the High Court of Justice and in the Court of Appeal respectively in the same manner in all respects as if they had been contained in the schedule to this Act until they shall respectively be altered or annulled by any Rules of Court made after the commencement of this Act.

See 38 & 39 Vict. c. 77, s. 18, *post*, p. 171; and note at p. 141.

Criminal procedure, subject to future Rules, to remain unaltered.

71. Subject to any Rules of Court to be made under and by virtue of this Act, the practice and procedure in all criminal causes and matters whatsoever in the High Court of Justice and in the Court of Appeal respectively, including the practice and procedure with respect to Crown cases reserved, shall be the same as the practice and procedure in similar causes and matters before the passing of this Act.

See 38 & 39 Vict. c. 77, s. 19, *post*, p. 173; and note at p. 141.

Act not to affect rules of evidence or juries.

72. Nothing in this Act or in the schedule hereto, or in any Rules of Court to be made by virtue hereof, save as far as relates to the power of the Court for special reasons to allow depositions or affidavits to be read, shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury, or the rules of evidence, or the law relating to jurymen or juries.

See 38 & 39 Vict. c. 77, s. 20, *post*, p. 173; and note at p. 141.

73. Save as by this Act, or by any Rules of Court



(whether contained in the schedule to this Act, or to be made under the authority thereof), is or shall be otherwise provided, all forms and methods of procedure which at the commencement of this Act were in force in any of the Courts whose jurisdiction is hereby transferred to the said High Court, and to the said Court of Appeal, respectively, under or by virtue of any law, custom, General Orders, or rules whatsoever, and which are not inconsistent with this Act or with any rules contained in the said schedule or to be made by virtue of this Act, may continue to be used and practised in the said High Court of Justice, and the said Court of Appeal, respectively, in such and the like cases, and for such and the like purposes, as those to which they would have been applicable in the respective Courts of which the jurisdiction is so transferred, if this Act had not passed.

Saving of existing procedure of Courts when not inconsistent with this Act or Rules.

See 38 & 39 Vict. c. 77, sec. 21, *post*, chap. v.; and note below.

74. From and after the commencement of this Act, the Supreme Court may at any time, with the concurrence of a majority of the judges thereof present at any meeting for that purpose held (of which majority the Lord Chancellor shall be one), alter or annul any Rules of Court for the time being in force, or make any new Rules of Court, for the purpose of regulating all such matters of practice and procedure in the Supreme Court, or relating to the suitors or officers of the said Court, or otherwise, as under the provisions of this Act are or may be regulated by Rules of Court: Provided, that any rule made in the exercise of this power, whether for altering or annulling any then existing rule, or for any other purpose, shall be laid before both Houses of Parliament, within the same time, and in the same manner and with the same effect in all respects, as is hereinbefore provided with respect to the said rules to be made before the commencement of this Act, and may be annulled and made void in the same manner as such last-mentioned rules.

Power to make and alter Rules after commencement of Act.

The above sections, from sec. 68 to sec. 74, both inclusive, have been repealed. For provisions in substitution thereof, see the Judicature Act, 1875, secs. 16-21; *post*, pp. 171-174, and second schedule of chap. v., *post*.



Councils of judges to consider procedure and administration of justice.

75. A Council of the judges of the Supreme Court, of which due notice shall be given to all the said judges, shall assemble once at least in every year, on such day or days as shall be fixed by the Lord Chancellor, with the concurrence of the Lord Chief Justice of England, for the purpose of considering the operation of this Act and of the Rules of Court for the time being in force, and also the working of the several offices and the arrangements relative to the duties of the officers of the said Courts respectively, and of inquiring and examining into any defects which may appear to exist in the system of procedure or the administration of the law in the said High Court of Justice or the said Court of Appeal, or in any other Court from which any appeal lies to the said High Court or any judge thereof, or to the said Court of Appeal; and they shall report annually to one of Her Majesty's Principal Secretaries of State what (if any) amendments or alterations it would in their judgment be expedient to make in this Act, or otherwise relating to the administration of justice, and what other provisions (if any) which cannot be carried into effect without the authority of Parliament it would be expedient to make for the better administration of justice. Any extraordinary council of the said judges may also at any time be convened by the Lord Chancellor.

Acts of Parliament relating to former Courts to be read as applying to Courts under this Act.

76. All Acts of Parliament relating to the several Courts and judges, whose jurisdiction is hereby transferred to the said High Court of Justice and the said Court of Appeal respectively, or wherein any of such Courts or judges are mentioned or referred to, shall be construed and take effect, so far as relates to anything done or to be done after the commencement of this Act, as if the said High Court of Justice or the said Court of Appeal, and the judges thereof, respectively, as the case may be, had been named therein instead of such Courts or judges whose jurisdiction is so transferred respectively; and in all cases not hereby expressly provided for in which, under any such Act, the concurrence or the advice or consent of the judge or any judges, or of any number of the judges,



of any one or more of the Courts whose jurisdiction is hereby transferred to the High Court of Justice is made necessary to the exercise of any power or authority capable of being exercised after the commencement of this Act, such power or authority may be exercised by and with the concurrence, advice, or consent of the same or a like number of judges of the said High Court of Justice; and all general and other commissions, issued under the Acts relating to the Central Criminal Court or otherwise, by virtue whereof any judges of any of the Courts whose jurisdiction is so transferred may, at the commencement of this Act, be empowered to try, hear, or determine any causes or matters, criminal or civil, shall remain and be in full force and effect, unless and until they shall respectively be in due course of law revoked or altered.

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## PART V.

### OFFICERS AND OFFICES.

77. The Queen's Remembrancer, and all masters, secretaries, registrars, clerks of records and writs, associates, prothonotaries, chief and other clerks, commissioners to take oaths or affidavits, messengers, and other officers and assistants at the time of the commencement of this Act attached to any Court or judge whose jurisdiction is hereby transferred to the High Court, or to the Court of Appeal, and also all registrars, clerks, officers, and other persons at the time of the commencement of this Act engaged in the preparation of commissions or writs, or in the registration of judgments or any other ministerial duties in aid of, or connected with, any Court, the jurisdiction of which is hereby transferred to the said Courts respectively, shall, from and after the commencement of this Act, be attached to the Supreme Court, consisting of the said High Court of Justice and the said Court of Appeal: provided, that all the duties with respect to ap-

Transfer of  
existing  
staff of  
officers to  
Supreme  
Court.



peals from the Court of Chancery of the County Palatine of Lancaster which are now performed by the Clerk of the Council of the Duchy of Lancaster shall be performed by the registrars, taxing masters, and other officers by whom like duties are discharged in the Supreme Court; and the said Clerk of the Council of the Duchy of Lancaster shall not be an officer attached to the said Court.

The officers so attached shall have the same rank and hold their offices by the same tenure and upon the same terms and conditions, and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions, as if this Act had not passed, and any such officer who is removeable by the Court to which he is now attached shall be removeable by the Court to which he shall be attached under this Act, or by the majority of the judges thereof.

The existing registrars and clerks to the registrars in the Chancery Registrar's office shall retain any right of succession secured to them by Act of Parliament, so as to entitle them in that office, or in any substituted office, to the succession to appointments with similar or analogous duties and with equivalent salaries.

The business to be performed in the High Court of Justice and in the Court of Appeal respectively, or in any Divisional or other Court thereof, or in the chambers of any judge thereof, other than that performed by the judges, shall be distributed among the several officers attached to the Supreme Court by this section in such manner as may be directed by Rules of Court: and such officers shall perform such duties in relation to such business as may be directed by Rules of Court, with this qualification, that the duties required to be performed by any officer shall be the same, or duties analogous to those which he performed previously to the passing of this Act; and, subject to such Rules of Court, all such officers respectively shall continue to perform the same duties, as nearly as may be, in the same manner as if this Act had not passed.

All secretaries, clerks, and other officers attached to



any existing judge who under the provisions of this Act shall become a judge of the High Court of Justice, or of the Court of Appeal, shall continue attached to such judge and shall perform the same duties as those which they have hitherto performed, or duties analogous thereto; and all such last-mentioned officers shall have the same rank and hold their offices by the same tenure, and upon the same terms and conditions, and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions, as if this Act had not passed: provided that the Lord Chancellor may, with the consent of the Treasury, increase the salary of any existing officer whose duties are increased by reason of the passing of this Act.

Upon the occurrence of a vacancy in the office of any officer coming within the provisions of this section, the Lord Chancellor, with the concurrence of the Treasury, may, in the event of such office being considered unnecessary, abolish the same, or may reduce the salary, or alter the designation or duties thereof, notwithstanding that the patronage thereof may be vested in an existing judge. Nothing in this Act contained shall interfere with the office of marshal attending any Commissioner of Assize.

This clause is amended by sec. 34, of the Judicature Act, 1875, *post*, p. 187.

78. The existing Queen's Counsel of the County Palatine of Lancaster shall for the future have the same precedence in the county, and the existing prothonotaries and district prothonotaries, and other officers of the Court of Common Pleas at Lancaster and the Court of Pleas at Durham respectively, and their successors, shall (subject to Rules of Court) perform the same or the like duties and exercise the same or the like powers and authorities in respect of all causes and matters depending in those Courts respectively at the commencement of this Act, and also in respect of all causes and matters which may afterwards be commenced in the High Court of Justice in the manner heretofore practised in the said Court of Common Pleas at Lancaster and the said Court of Pleas at

Officers of  
Courts of  
Pleas at  
Lancaster  
and Dur-  
ham.



Durham respectively, as at the commencement of this Act may lawfully be performed and exercised by them respectively under any Acts of Parliament for the time being in force with respect to the said last-mentioned Courts respectively, or under any other authority; and all powers in respect of any such prothonotaries, district prothonotaries, or other officers of the Court of Common Pleas at Lancaster, which at the commencement of this Act may be vested by law in the Chancellor of the Duchy and County Palatine of Lancaster, under any such Act of Parliament or otherwise, and to which the concurrence of any other authority may not be required, shall and may be exercised after the commencement of this Act by the Lord Chancellor; and all the powers of making or publishing any general rules or orders with respect to the powers or duties of such prothonotaries, district prothonotaries, or other officers of the said Court of Common Pleas at Lancaster or the said Court of Pleas at Durham, or with respect to the business of the said Court respectively, or with respect to any fees to be taken therein, or otherwise with reference thereto, which under any such Act as aforesaid or otherwise by law may be vested in the Chancellor of the Duchy and County Palatine of Lancaster, with the concurrence of any judges or judge, or in any other authority, shall be exercised after the commencement of this Act in the manner hereby provided with respect to Rules of Court to be made under this Act, and (in all cases in which the sanction of the Treasury is now required) with the sanction of the Treasury; and all provisions made by any such Acts as aforesaid, or otherwise for or with respect to the remuneration of any such prothonotaries, district prothonotaries, or other officers as aforesaid, shall remain and be in full force and effect until the same shall be altered under the provisions of this Act, or otherwise by lawful authority.

Provisions as to the Lancaster fee fund and the salaries, &c., of the officers of the Courts at Lancaster and Durham have been made by sec. 27 of the Judicature Act, 1875, *post*, p. 180.

79. Each of the judges of the High Court of Justice,



and of the ordinary judges of the Court of Appeal, appointed respectively after the commencement of this Act, and also such of the ordinary judges of the Court of Appeal as have no similar officers at the time of the commencement of this Act, shall have such officers as hereinafter mentioned, who shall be attached to his person as such judge, and appointed and removable by him at his pleasure, and who shall respectively receive the salaries hereinafter mentioned; (that is to say,)

To the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, respectively, there shall be attached a secretary, whose salary shall be five hundred pounds per annum, a principal clerk, whose salary shall be four hundred pounds per annum, and a junior clerk, whose salary shall be two hundred pounds per annum. To each of the other judges of the High Court of Justice, and to each of the ordinary judges of the Court of Appeal, there shall be attached a principal clerk, whose salary shall be four hundred pounds per annum, and, in the case of the judges of the High Court of Justice, a junior clerk, whose salary shall be two hundred pounds per annum.

Such one or more of the officers so attached to each of the said judges, as such judge shall think fit, shall be required, while in attendance on such judge, to discharge, without further remuneration, the duties of crier in Court or on circuit, or of usher or train bearer. The duties of Chamber clerks, so far as relates to business transacted in Chambers by judges appointed after the commencement of this Act, shall be performed by officers of the Court in the permanent civil service of the Crown.

This section is amended by sec. 35 of the Judicature Act, 1875, with regard to persons holding the office of Chamber clerk at the commencement of this Act, *post*, p. 187.

80. Any existing officer attached to any existing Court or judge whose jurisdiction is abolished or transferred by this Act, who is paid out of fees, and whose emoluments

Personal  
officers of  
future  
judges.

Provisions  
as to  
officers  
paid out  
of fees.



are affected by the passing of this Act shall be entitled to prefer a claim to the Treasury; and the Treasury, if it shall consider his claim to be established, shall have power to award to him such sum, either by way of compensation, or as an addition to his salary, as it thinks just, having regard to the tenure of office by such officer and to the other circumstances of the case.

Doubts as to the status of officers to be determined by Rule.

81. Where a doubt exists as to the position under this Act of any existing officer attached to any existing Court or judge affected by this Act, such doubt may be determined by Rules of Court: subject to this proviso, that such Rules of Court shall not alter the tenure of office, rank, pension (if any), or salary of such officer, or require him to perform any duties other than duties analogous to those which he has already performed.

Powers of Commissioners to administer oaths.

82. Every person who at the commencement of this Act shall be authorized to administer oaths in any of the Courts whose jurisdiction is hereby transferred to the High Court of Justice shall be a commissioner to administer oaths in all causes and matters whatsoever which may from time to time be depending in the said High Court or in the Court of Appeal.

In consequence of this section, a great number of attorneys applied to be made commissioners of one or other of the Common Law Courts in the interval between the passing of this Act and the Judicature Act, 1875.

Official Referees to be appointed.

83. There shall be attached to the Supreme Court permanent officers to be called Official Referees, for the trial of such questions as shall under the provisions of this Act be directed to be tried by such referees. The number and the qualifications of the persons to be so appointed from time to time, and the tenure of their offices, shall be determined by the Lord Chancellor, with the concurrence of the presidents of the Divisions of the High Court of Justice, or a majority of them (of which majority the Lord Chief Justice of England shall be one), and with the sanction of the Treasury. Such official referees shall perform the duties entrusted to them in such places, whether in London or in the country, as may from time



to time be directed or authorized by any order of the said High Court, or of the Court of Appeal; and all proper and reasonable travelling expenses incurred by them in the discharge of their duties shall be paid by the Treasury out of moneys to be provided by Parliament.

As to the powers of these referees, and the mode in which trials are to be conducted before them, see secs. 57–59, *ante*, pp. 134, 135, and the rules appended to the Judicature Act, 1875, Order XXXVI., Rules 29–34, *post*, chap. v.

84. Subject to the provisions in this Act contained with respect to existing officers of the Courts whose jurisdiction is hereby transferred to the Supreme Court, there shall be attached to the Supreme Court such officers as the Lord Chancellor with the concurrence of the Presidents of the Divisions of the High Court of Justice, or the major part of them, of which majority the Lord Chief Justice of England shall be one, and with the sanction of the Treasury, may from time to time determine.

Duties, appointment, and removal of officers of Supreme Court.

Such of the said several officers respectively as may be thought necessary or proper for the performance of any special duties, with respect either to the Supreme Court generally, or with respect to the High Court of Justice or the Court of Appeal, or with respect to any one of the Divisions of the High Court, or with respect to any particular judge or judges of either of the said Courts, may by the same authority, and with the like sanction as aforesaid, be attached to the said respective Courts, Divisions, and judges accordingly.

All officers assigned to perform duties with respect to the Supreme Court generally, or attached to the High Court of Justice or the Court of Appeal, and all commissioners to take oaths or affidavits in the Supreme Court, shall be appointed by the Lord Chancellor.

All officers attached to the Chancery Division of the said High Court, who have been heretofore appointed by the Master of the Rolls, shall continue, while so attached, to be appointed by the Master of the Rolls.

All other officers attached to any Division of the said High Court shall be appointed by the President of that Division.



All officers attached to any judge shall be appointed by the judge to whom they are attached.

Any officer of the Supreme Court (other than such officers attached to the person of a judge as are hereinbefore declared to be removeable by him at his pleasure) may be removed by the person having the right of appointment to the office held by him, with the approval of the Lord Chancellor, for reasons to be assigned in the order of removal.

The authority of the Supreme Court over all or any of its officers may be exercised in and by the said High Court and the said Court of Appeal respectively, and also in the case of officers attached to any Division of the High Court by the President of such Division, with respect to any duties to be discharged by them respectively.

Salaries  
and pen-  
sions of  
officers.

85. There shall be paid to every official referee and other salaried officer appointed in pursuance of this Act such salary out of moneys to be provided by Parliament as may be determined by the Treasury with the concurrence of the Lord Chancellor.

An officer attached to the person of a judge shall not be entitled to any pension or compensation in respect of his retirement from or the abolition of his office, except so far as he may be entitled thereto independently of this Act; but every other officer to be hereafter appointed in pursuance of this part of this Act, and whose whole time shall be devoted to the duties of his office, shall be deemed to be employed in the permanent Civil Service of Her Majesty, and shall be entitled, as such, to a pension or compensation in the same manner, and upon the same terms and conditions, as the other permanent civil servants of Her Majesty are entitled to pension or compensation.

Patronage  
not other-  
wise pro-  
vided for.

86. Subject to the provisions hereinbefore contained, any rights of patronage and other rights or powers incident to any Court, or to the office of any judge of any Court whose jurisdiction is transferred to the said High Court of Justice, or to the said Court of Appeal, in respect of which rights of patronage or other rights or powers no provision is or shall be otherwise made by or



under the authority of this Act, shall be exercised as follows, that is to say: if incident to the office of any existing judge shall continue to be exercised by such existing judge during his continuance in office as a judge of the said High Court or of the Court of Appeal, and after the death, resignation, or removal from office of such existing judge shall be exercised in such manner as Her Majesty may by Sign Manual direct.

87. From and after the commencement of this Act all persons admitted as solicitors, attorneys, or proctors of or by law empowered to practise in any Court, the jurisdiction of which is hereby transferred to the High Court of Justice or the Court of Appeal, shall be called solicitors of the Supreme Court, and shall be entitled to the same privileges and be subject to the same obligations, so far as circumstances will permit, as if this Act had not passed; and all persons who from time to time, if this Act had not passed, would have been entitled to be admitted as solicitors, attorneys, or proctors of or been by law empowered to practise in any such Courts, shall be entitled to be admitted and to be called solicitors of the Supreme Court, and shall be admitted by the Master of the Rolls, and shall, as far as circumstances will permit, be entitled as such solicitors to the same privileges and be subject to the same obligations as if this Act had not passed.

Any solicitors, attorneys, or proctors to whom this section applies shall be deemed to be officers of the Supreme Court: and that Court, and the High Court of Justice, and the Court of Appeal respectively, or any Division or judge thereof, may exercise the same jurisdiction in respect of such solicitors or attorneys as any one of Her Majesty's superior Courts of Law or Equity might previously to the passing of this Act have exercised in respect of any solicitor or attorney admitted to practise therein.

This section has been amended by sec. 14 of the Judicature Act, 1875, *post*, p. 170.



## PART VI.

## JURISDICTION OF INFERIOR COURTS.

Power by  
Order in  
Council to  
confer  
jurisdic-  
tion on  
inferior  
Courts.

88. It shall be lawful for Her Majesty from time to time by Order in Council to confer on any inferior Court of civil jurisdiction, the same jurisdiction in Equity and in Admiralty, respectively, as any County Court now has, or may hereafter have, and such jurisdiction, if and when conferred, shall be exercised in the manner by this Act directed.

As to appeals from inferior Courts, see *ante*, p. 129, and sec. 15 of the Judicature Act, 1875, *post*, p. 170, and secs. 89, 90, and 91.

Powers of  
inferior  
Courts  
having  
Equity and  
Admiralty  
jurisdic-  
tion.

89. Every inferior Court which now has or which may after the passing of this Act have jurisdiction in Equity, or at Law and in Equity, and in Admiralty respectively, shall, as regards all causes of action within its jurisdiction for the time being, have power to grant, and shall grant in any proceeding before such Court, such relief, redress, or remedy, or combination of remedies, either absolute or conditional, and shall in every such proceeding give such and the like effect to every ground of defence or counter-claim, equitable or legal (subject to the provision next hereinafter contained), in as full and ample a manner as might and ought to be done in the like case by the High Court of Justice.

Counter-  
claims in  
inferior  
Courts, and  
transfers  
therefrom.

90. Where in any proceeding before any such inferior Court any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the Court, such defence or counter-claim shall not affect the competence or the duty of the Court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the Court has jurisdiction to administer shall be given to the defendant upon any such counter-claim: Provided always, that in such case it shall be lawful for the High Court, or any Division or judge thereof, if it



shall be thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred from such inferior Court to the High Court, or to any Division thereof; and in such case the record in such proceeding shall be transmitted by the registrar, or other proper officer, of the inferior Court to the said High Court; and the same shall thenceforth be continued and prosecuted in the said High Court as if it had been originally commenced therein.

91. The several rules of law enacted and declared by this Act shall be in force and receive effect in all Courts whatsoever in England, as far as the matters to which such rules relate shall be respectively cognisable by such Courts.

Rules of law to apply to inferior Courts.

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## PART VII.

### MISCELLANEOUS PROVISIONS.

92. All books, documents, papers, and chattels in the possession of any Court, the jurisdiction of which is hereby transferred to the High Court of Justice or to the Court of Appeal, or of any officer or person attached to any such Court, or such officer, or by reason of his being so attached, shall be transferred to the Supreme Court, and shall be dealt with by such officer or person in such manner as the High Court of Justice or the Court of Appeal may by order direct; and any person failing to comply with any order made for the purpose of giving effect to this section shall be guilty of a contempt of the Supreme Court.

Transfer of books and papers to Supreme Court.

93. This Act, except as herein is expressly directed, shall not, unless or until other commissions are issued in pursuance thereof, affect the circuits of the judges or the issue of any Commissions of Assize, Nisi Prius, Oyer and Terminer, Gaol Delivery, or other commissions for the discharge of civil or criminal business on circuit or otherwise, or any patronage vested in any judges going circuit, or

Saving as to circuits, &c.



the position, salaries, or duties of any officers transferred to the Supreme Court who are now officers of the Superior Courts of Common Law, and who perform duties in relation to either the civil or criminal business transacted on circuit.

As to circuits, see secs. 16, 29, and 37, *ante*, pp. 100, 117, 125, and sec. 23 of the Judicature Act, 1875, *post*, pp. 174–177.

Saving as  
to Lord  
Chancellor.

94. This Act, except so far as herein is expressly directed, shall not affect the office or position of Lord Chancellor; and the officers of the Lord Chancellor shall continue attached to him in the same manner as if this Act had not passed; and all duties, which any officer of the Court of Chancery may now be required to perform in aid of any duty whatsoever of the Lord Chancellor, may in like manner be required to be performed by such officer, when transferred to the Supreme Court, and by his successors.

Saving as  
to Chan-  
cellor of  
Lancaster.

95. This Act, except so far as is herein expressly directed, shall not affect the offices, position, or functions of the Chancellor of the County Palatine of Lancaster.

Saving as  
to Chan-  
cellor of  
the Ex-  
chequer  
and  
sheriffs.

96. The Chancellor of the Exchequer shall not be a judge of the High Court of Justice, or of the Court of Appeal, and shall cease to exercise any judicial functions hitherto exercised by him as a judge of the Court of Exchequer; but save as aforesaid he shall remain in the same position as to duties and salary, and other incidents of his office, as if this Act had not passed. The same order and course with respect to the appointment of sheriffs shall be used and observed in the Exchequer Division of the said High Court as has been heretofore used and observed in the Court of Exchequer.

Saving as  
to Lord  
Treasurer  
and office  
of the  
Receipt of  
Exchequer.

97. Nothing in this Act contained shall affect the office of Lord Treasurer, except that any Lord Treasurer shall not hereafter exercise any judicial functions hitherto exercised by him as a judge of the Court of Exchequer; and nothing in this Act shall affect the office of the Receipt of the Exchequer.

Provisions  
as to Great

98. When the Great Seal is in commission, the Lords Commissioners shall represent the Lord Chancellor for



the purposes of this Act, save that as to the Presidency of the Court of Appeal, and the appointment or approval of officers, or the sanction to any order for the removal of officers, or any other act to which the concurrence or presence of the Lord Chancellor is hereby made necessary, the powers given to the Lord Chancellor by this Act may be exercised by the Senior Lord Commissioner for the time being. Seal being in commission.

99. From and after the commencement of this Act, the Counties Palatine of Lancaster and Durham shall respectively cease to be Counties Palatine, so far as respects the issue of commissions of assize, or other like commissions, but not further or otherwise; and all such commissions may be issued for the trial of all causes and matters within such counties respectively in the same manner in all respects as in any other counties of England and Wales. Provision as to Commissions in Counties Palatine.

100. In the construction of this Act, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned shall have, or include, the meanings following; (that is to say,) Interpretation of terms.

“ Lord Chancellor ” shall include Lord Keeper of the Great Seal.

“ The High Court of Chancery ” shall include the Lord Chancellor.

“ The Court of Appeal in Chancery ” shall include the Lord Chancellor as a judge on rehearing or appeal.

“ London Court of Bankruptcy ” shall include the Chief Judge in Bankruptcy.

“ The Treasury ” shall mean the Commissioners of Her Majesty's Treasury for the time being, or any two of them.

“ Rules of Court ” shall include forms.

“ Cause ” shall include any action, suit, or other original proceeding between a plaintiff and a defendant, and any criminal proceeding by the Crown.

“ Suit ” shall include action.

“ Action ” shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by Rules of Court; and shall not include a criminal proceeding by the Crown.



- “ Plaintiff ” shall include every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons, or otherwise.
- “ Petitioner ” shall include every person making any application to the Court, either by petition, motion, or summons, otherwise than as against any defendant.
- “ Defendant ” shall include every person served with any writ of summons or process, or served with notice of, or entitled to attend any proceedings.
- “ Party ” shall include every person served with notice of, or attending any proceeding, although not named on the record.
- “ Matter ” shall include every proceeding in the Court not in a cause.
- “ Pleading ” shall include any petition or summons, and also shall include the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant.
- “ Judgment ” shall include decree.
- “ Order ” shall include rule.
- “ Oath ” shall include solemn affirmation and statutory declaration.
- “ Crown cases reserved ” shall mean such questions of law reserved in criminal trials as are mentioned in the Act of the eleventh and twelfth years of Her Majesty’s reign, chapter seventy-eight.
- “ Pension ” shall include retirement and superannuation allowance.
- “ Existing ” shall mean existing at the time appointed for the commencement of this Act.

There was a schedule to this Act containing rules, but they have been omitted, as they have been repealed by the Judicature Act, 1875, which contains rules substituted for them. See *post*, pp. 171–174.



## CHAPTER V.

## THE SUPREME COURT OF JUDICATURE ACT, 1875.

38 &amp; 39 VICT. c. 77.

*A verbatim copy of the Act, with explanatory observations, authorities, and cases cited in reference to the principal provisions and alterations thereby effected in the Law and the administration of Justice, and the forms and procedure of the Supreme Court, together with the amendments made in the Act of 1873.*

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## ARRANGEMENT OF CLAUSES.

## CLAUSE

1. *Short title, and construction with 36 & 37 Vict. c. 66.*
2. *Commencement of Act.*
3. *Explanation of 36 & 37 Vict. c. 66, s. 5, as to number of judges.*
4. *Constitution of Court of Appeal.*
5. *Tenure of office of judges, and oaths of office. Judges not to sit in the House of Commons.*
6. *Precedence of judges.*
7. *Jurisdiction of Lords Justices in respect of lunatics.*
8. *Admiralty judges and registrar.*
9. *London Court of Bankruptcy not to be transferred to High Court of Justice.*
10. *Amendment of 36 & 37 Vict. c. 66, s. 25, as to rules of law upon certain points.*
11. *Provision as to option for any plaintiff (subject to Rules) to choose in what division he will sue,—in substitution for 36 & 37 Vict. c. 66, s. 35.*
12. *Sittings of Court of Appeal.*
13. *Amendment of section 60 of 36 & 37 Vict. c. 66 as to district registrars.*
14. *Amendment of 36 & 37 Vict. c. 66, s. 87, as to enactments relating to attorneys.*
15. *Appeal from inferior courts of record.*



16. *Rules in first schedule in substitution for 36 & 37 Vict. c. 66, s. 69, and schedule.*
17. *Provision as to making, &c., of Rules of Court before or after the commencement of the Act,—in substitution for 36 & 37 Vict. c. 66, ss. 68, 69, 74, and schedule.*
18. *Provision as to Rules of Probate, Divorce, and Admiralty Courts, being Rules of the High Court,—in substitution for 36 & 37 Vict. c. 66, s. 70.*
19. *Provision as to criminal procedure, subject to future rules remaining unaltered,—in substitution for 36 & 37 Vict. c. 66, s. 71.*
20. *Provision as to Act not affecting rules of evidence or juries,—in substitution for 36 & 37 Vict. c. 66, s. 72.*
21. *Provision for saving of existing procedure of Courts when not inconsistent with this Act or Rules of Court,—in substitution for 36 & 37 Vict. c. 66, s. 73.*
22. *Nothing in principal Act to prejudice right to have issues submitted and left by the judge to the jury.*
23. *Regulation of circuits and meaning of "Assizes." Sessions under commission of oyer and terminer, or gaol delivery, or any commission, included.*
24. *Additional power as to regulation of practice and procedure by Rules of Court.*
25. *Orders and Rules to be laid before Parliament, and may be annulled on address from either House.*
26. *Fixing and collection of fees in High Court and Court of Appeal.*
27. *Provisions as to Lancaster Fee Fund, and salaries, &c., of officers of courts at Lancaster and Durham, 32 & 33 Vict. c. 37.*
28. *Annual account of fees and expenditure.*
29. *Amendment of law as to payments to senior puisne judge of Queen's Bench and Queen's coroner.*
30. *Amendment of 35 & 36 Vict. c. 44, as to the transfer of government securities to and from the paymaster-general on behalf of the Court of Chancery and the National Debt Commissioners, and repeal of 16th section of that Act.*
31. *Abolition of secretary to the visitors of lunatics—16 & 17 Vict. c. 70; 22 Vict. c. 26.*
32. *Amendment of 32 & 33 Vict. c. 83, s. 19, and 32 & 33 Vict. c. 71, s. 116, as to payment of unclaimed dividends to persons entitled.*
33. *Repeal of Acts in second schedule, and other enactments inconsistent with the Judicature Acts 1873, 1875.*
34. *As to vacancies in any office within section seventy-seven of principal Act (1873).*
35. *Amendment of principal Act (1873), section seventy-nine, as to chamber clerks.*

**FIRST SCHEDULE.**—*Rules of Court respecting the procedure and practice of the Court from the commencement of the action to final judgment and execution, with an interpretation clause, together with forms of pro-*



*ceedings, including indorsements upon writs, notices to third parties, interrogatories, inspection and admission of documents, statement of claims, defences, replications, rejoinders, and demurrers in each division of the Supreme Court.*

*SECOND SCHEDULE.—Enactments repealed, viz., 6 Geo. 4, c. 84, s. 7 ; 32 & 33 Vict. c. 71, part of s. 116 ; 32 & 33 Vict. c. 83, part of s. 19 ; 36 & 37 Vict. c. 66, several sections and the whole of the schedule to that Act.*

*An Act to amend and extend the Supreme Court of Judica- A.D. 1875.  
ture Act, 1873.*

*[11th August, 1875.]*

Whereas it is expedient to amend and extend the Supreme Court of Judicature Act, 1873 :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Supreme Court of Judicature Act, 1873 (in this Act referred to as the principal Act), and together with the principal Act may be cited as the Supreme Court of Judicature Acts, 1873 and 1875, and this Act may be cited separately as the Supreme Court of Judicature Act, 1875.

*Short title,  
and con-  
struction  
with 36 &  
37 Vict.  
c. 66.*

2. This Act, except any provision thereof which is declared to take effect before the commencement of this Act, shall commence and come into operation on the first day of November, 1875.

*Commence-  
ment of  
Act.*

Sections twenty, twenty-one, and fifty-five of the principal Act shall not commence or come into operation until the first day of November, 1876, and until the said sections come into operation an appeal may be brought to the House of Lords from any judgment or order of the Court of Appeal hereinafter mentioned in any case in which any appeal or error might now be brought to the House of Lords or to Her Majesty in Council from a similar judgment, decree, or order of any Court or judge



whose jurisdiction is by the principal Act transferred to the High Court of Justice or the Court of Appeal, or in any case in which leave to appeal shall be given by the Court of Appeal.

See *ante*, pp. 103, 104, 132.

Explan-  
ation of 36  
& 37 Vict.  
c. 66, s. 5,  
as to  
number of  
Judges.

3. Whereas by section five of the principal Act it is provided as follows: "that if at the commencement of this Act the number of puisne justices and junior barons who shall become judges of the said High Court shall exceed twelve in the whole, no new judge of the said High Court shall be appointed in the place of any such puisne justice or junior baron who shall die or resign, while such whole number shall exceed twelve, it being intended that the permanent number of judges of the said High Court shall not exceed twenty-one;" and whereas, having regard to the state of business in the several courts whose jurisdiction is transferred by the principal Act to the High Court of Justice, it is expedient that the number of judges thereof should not at present be reduced: Be it enacted, that so much of the said section as is hereinbefore recited shall be repealed.

The Lord Chancellor shall not be deemed to be a permanent judge of that Court, and the provisions of the said section relating to the appointment and style of the judges of the said High Court shall not apply to the Lord Chancellor.

See *ante*, p. 93.

Constitu-  
tion of  
Court of  
Appeal.

4. Her Majesty's Court of Appeal, in this Act and in the principal Act referred to as the Court of Appeal, shall be constituted as follows: There shall be five ex-officio judges thereof, and also so many ordinary judges, not exceeding three at any one time, as Her Majesty shall from time to time appoint.

The ex-officio judges shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer.



The first ordinary judges of the said Court shall be the present Lords Justices of Appeal in Chancery, and such one other person as Her Majesty may be pleased to appoint by letters patent. Such appointment may be made either before or after the commencement of this Act, but if made before shall take effect at the commencement of the Act.

The ordinary judges of the Court of Appeal shall be styled Justices of Appeal.

The Lord Chancellor may by writing addressed to the president of any one or more of the following Divisions of the High Court of Justice, that is to say, the Queen's Bench Division, the Common Pleas Division, the Exchequer Division, and the Probate, Divorce, and Admiralty Division, request the attendance at any time, except during the times of the spring or summer circuits, of an additional judge from such Division or Divisions (not being ex-officio judge or judges of the Court of Appeal) at the sittings of the Court of Appeal, and a judge, to be selected by the Division from which his attendance is requested, shall attend accordingly.

Every additional judge, during the time that he attends the sittings of Her Majesty's Court of Appeal, shall have all the jurisdiction and powers of a judge of the said Court of Appeal, but he shall not otherwise be deemed to be a judge of the said Court, or to have ceased to be a judge of the Division of the High Court of Justice to which he belongs.

Section fifty-four of the principal Act is hereby repealed, and instead thereof the following enactment shall take effect: No judge of the said Court of Appeal shall sit as a judge on the hearing of an appeal from any judgment or order made by himself, or made by any Divisional Court of the High Court of which he was and is a member.

Whenever the office of an ordinary judge of the Court of Appeal becomes vacant a new judge may be appointed thereto by Her Majesty by letters patent.



See *ante*, p. 132, as to sec. 54 of 36 & 37 Vict. c. 66; and as to the sittings of the Court, see *post*, p. 168.

Tenure of  
office of  
Judges,  
and oaths  
of office.  
Judges not  
to sit in the  
House of  
Commons.

5. All the judges of the High Court of Justice, and of the Court of Appeal respectively, with the exception of the Lord Chancellor, shall hold their offices as such judges respectively during good behaviour, subject to a power of removal by Her Majesty, on an address presented to Her Majesty by both Houses of Parliament. No judge of either of the said Courts shall be capable of being elected to or of sitting in the House of Commons. Every person appointed after the passing of this Act to be judge of either of the said Courts (other than the Lord Chancellor), when he enters on the execution of his office, shall take, in the presence of the Lord Chancellor, the oath of allegiance, and judicial oath as defined by the Promissory Oaths Act, 1868. The oaths to be taken by the Lord Chancellor shall be the same as heretofore.

Precedence  
of Judges.

6. The Lord Chancellor shall be president of the Court of Appeal; the other ex-officio judges of the Court of Appeal shall rank in the order of their present respective official precedence. The ordinary judges of the Court of Appeal, if not entitled to precedence as Peers or Privy Councillors, shall rank according to the priority of their respective appointments as such judges.

The judges of the High Court of Justice who are not also judges of the Court of Appeal shall rank next after the judges of the Court of Appeal, and, among themselves (subject to the provisions in the principal Act contained as to existing judges), according to the priority of their respective appointments.

The provision as to existing judges will be found in sec. 11 of the Judicature Act, 1873, *ante*, p. 97.

Jurisdic-  
tion of  
Lords Jus-  
tices in  
respect of  
lunatics.

7. Any jurisdiction usually vested in the Lords Justices of Appeal in Chancery, or either of them, in relation to the persons and estates of idiots, lunatics, and persons of unsound mind, shall be exercised by such judge or judges of the High Court of Justice or Court of Appeal as may be intrusted by the sign manual of Her Majesty or Her



successors with the care and commitment of the custody of such persons and estates; and all enactments referring to the Lords Justices as so intrusted shall be construed as if such judge or judges so intrusted had been named therein instead of such Lords Justices: Provided that each of the persons who may at the commencement of the principal Act be Lords Justices of Appeal in Chancery shall, during such time as he continues to be a judge of the Court of Appeal, and is intrusted as aforesaid, retain the jurisdiction vested in him in relation to such persons and estates as aforesaid.

It will have been observed that the jurisdiction of the Lord Chancellor and the Lords Justices with respect to lunatics has not been transferred to the High Court of Justice. See sec. 17, sub-sec. 3, of the Judicature Act, 1873, *ante*, p. 101.

8. Whereas by section eleven of the principal Act it is provided as follows: "Every existing judge who is by <sup>Admiralty judges and registrar.</sup> this Act made a judge of the High Court of Justice or "an ordinary judge of the Court of Appeal shall, as to "tenure of office, rank, title, salary, pension, patronage, "and powers of appointment or dismissal, and all other "privileges and disqualifications, remain in the same "condition as if this Act had not passed; and, subject to "the change effected in their jurisdiction and duties by "or in pursuance of the provisions of this Act, each of "the said existing judges shall be capable of performing "and liable to perform all duties which he would have "been capable of performing or liable to perform in pursuance of any Act of Parliament, law, or custom if this "Act had not passed. No judge appointed before the "passing of this Act shall be required to act under any "commission of assize, nisi prius, oyer and terminer, or "gaol delivery, unless he was so liable by usage or custom at the commencement of this Act:"

And whereas the judge of the High Court of Admiralty is by the principal Act appointed a judge of the High Court of Justice:

And whereas such judge is, as to salary and pension, inferior in position to the other puisne judges of the supe-



rior Courts of Common Law, but holds certain ecclesiastical and other offices in addition to the office of judge of the High Court of Admiralty :

And whereas it is expedient that such judge, if he be willing to relinquish such other offices, should be placed in the same position as to rank, salary, and pension as the other puisne judges of the superior Courts of Common Law :

Be it enacted that—

If the existing judge of the High Court of Admiralty under his hand signifies to the Lord Chancellor in writing, before the commencement of the principal Act, that he is willing to relinquish such other offices as aforesaid, and does before the commencement of the principal Act resign all other offices of emolument held by him except the office of Judge of the High Court of Admiralty, he shall, from and after the commencement of the principal Act, be entitled to the same rank, salary, and pension as if he had been appointed a judge of the High Court of Justice immediately on the commencement of the principal Act, with this addition, that, in reckoning service for the purposes of his pension, his service as a judge of the High Court of Admiralty shall be reckoned in the same manner as if the High Court of Justice had been established at the time of his accepting the office of judge of the High Court of Admiralty, and he had continued from such time to be a judge of the said High Court of Justice.

See ss. 16, 17, 18 of the Judicature Act, 1873, *ante*, pp. 100–103.

The present holder of the office of registrar of Her Majesty in Ecclesiastical and Admiralty causes, shall, as respects any appeals in which he would otherwise be concerned coming within the cognisance of the Court of Appeal, be deemed to be an officer attached to the Supreme Court ; and the office, so far as respects the duties in relation to such appeals as aforesaid, shall be deemed to be a separate office within the meaning of section seventy-seven of the principal Act, and may be dealt with accordingly. He shall be entitled, in so far as he sustains



any loss of emoluments by or in consequence of the principal Act or this Act, to prefer a claim to the Treasury in the same manner as an officer paid out of fees whose emoluments are affected by the passing of the principal Act is entitled to do under section eighty of the principal Act.

Subject as aforesaid, the person who is at the time of the passing of this Act registrar of Her Majesty in Ecclesiastical and Admiralty causes shall, notwithstanding anything in the principal Act or this Act, have the same rank and hold his office upon the same tenure and upon the same terms and conditions as heretofore; but it shall be lawful for Her Majesty by Order in Council made upon the recommendation of the Lord Chancellor, with the concurrence of the Treasury, to make, notwithstanding anything contained in any Act of Parliament, such arrangements with respect to the duties of the said last-mentioned office, either by abolition thereof or otherwise, as to Her Majesty may seem expedient: Provided that such Order shall not take effect during the continuance in such office of the said person so being registrar at the time of the passing of this Act, without his assent.

Every judge of the Probate, Divorce, and Admiralty Division of the said High Court of Justice appointed after the passing of this Act shall, so far as the state of business in the said division will admit, share with the judges mentioned in section thirty-seven of the principal Act the duty of holding sittings for trials by jury in London and Middlesex, and sittings under commissions of assize, oyer and terminer, and gaol delivery.

This would require the Judge to sit in the Central Criminal Court; as to the C. C. C., see *ante*, p. 42, *post*, p. 177.

9. The London Court of Bankruptcy shall not be united or consolidated with the Supreme Court of Judicature, and the jurisdiction of that Court shall not be transferred under the principal Act to the High Court of Justice, but shall continue the same in all respects as if such transfer had not been made by the principal Act, and the principal Act shall be construed as if such union, consolidation, and transfer had not been made: Provided that—

London  
Court of  
Bank-  
ruptcy not  
to be trans-  
ferred to  
High Court  
of Justice.



1. The office of Chief Judge in Bankruptcy shall be filled by such one of the judges of the High Court of Justice appointed since the passing of the Bankruptcy Act, 1869, or, with his consent, of such one of the judges appointed prior to the passing of the last-mentioned Act, as may be appointed by the Lord Chancellor to that office; and,
2. The appeal from the London Court of Bankruptcy shall lie to the Court of Appeal in accordance with the principal Act.

See provisions of the Judicature Act, 1873, as to the Bankruptcy Court, *ante*, p. 101; and also *ante*, p. 84.

Amend-  
ment of 36  
& 37 Vict.  
c. 66, s. 25,  
as to rules  
of law upon  
certain  
points.

10. Whereas by section twenty-five of the principal Act, after reciting that it is expedient to amend and declare the law to be thereafter administered in England as to the matters next thereafter mentioned, certain enactments are made with respect to the law, and it is expedient to amend the said section: Be it therefore enacted as follows:—

Sub-section one of clause twenty-five of the principal Act is hereby repealed, and instead thereof the following enactment shall take effect; (that is to say,) in the administration by the Court of the assets of any person who may die after the commencement of this Act, and whose estate may prove to be insufficient for the payment in full of his debts and liabilities, and in the winding-up of any company under the Companies Acts, 1862 and 1867, whose assets may prove to be insufficient for the payment of its debts and liabilities and the costs of winding up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being under the Law of Bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the



estate of any such deceased person, or out of the assets of any such company, may come in under the decree or order for the administration of such estate, or under the winding-up of such company, and make such claims against the same as they may respectively be entitled to by virtue of this Act.

In sub-section seven of the said section the reference to the date of the passing of the principal Act shall be deemed to refer to the date of the commencement of the principal Act.

See sec. 25 of 36 & 37 Vict. c. 66; *ante*, p. 111.

11. Subject to any Rules of Court and to the provisions of the principal Act and this Act, and to the power of transfer, every person by whom any cause or matter may be commenced in the said High Court of Justice shall assign such cause or matter to one of the divisions of the said High Court as he may think fit, by marking the document by which the same is commenced with the name of such division, and giving notice thereof to the proper officer of the Court: Provided that—

Provision as to option for any plaintiff (subject to Rules) to choose in what division he will sue,—in substitution for 36 & 37 Vict. c. 66, s. 35.

1. All interlocutory and other steps and proceedings in or before the said High Court in any cause or matter subsequent to the commencement thereof, shall be taken (subject to any Rules of Court and to the power of transfer) in the division of the said High Court to which such cause or matter is for the time being attached; and,
2. If any plaintiff or petitioner shall at any time assign his cause or matter to any division of the said High Court to which, according to the Rules of Court or the provisions of the principal Act or this Act, the same ought not to be assigned, the Court, or any judge of such division, upon being informed thereof, may, on a summary application at any stage of the cause or matter, direct the same to be transferred to the division of the said Court to which, according to such rules or provisions, the same ought to have been assigned, or



he may, if he think it expedient so to do, retain the same in the division in which the same was commenced; and all steps and proceedings whatsoever taken by the plaintiff or petitioner, or by any other party in any such cause or matter, and all orders made therein by the Court or any judge thereof before any such transfer shall be valid and effectual to all intents and purposes in the same manner as if the same respectively had been taken and made in the proper division of the said Court to which such cause or matter ought to have been assigned; and,

3. Subject to Rules of Court, a person commencing any cause or matter shall not assign the same to the Probate, Divorce, and Admiralty Division unless he would have been entitled to commence the same in the Court of Probate, or in the Court for Divorce and Matrimonial Causes, or in the High Court of Admiralty, if this Act had not passed.

See secs. 34 and 35 of 36 & 37 Vict. c. 66, *ante* pp. 121, 123; and Order V., Rules 4 and 9, and Order LI., *post*, p. 196, *et seq.*

Sittings of  
Court of  
Appeal.

12. Every appeal to the Court of Appeal shall, where the subject-matter of the appeal is a final order, decree, or judgment, be heard before not less than three judges of the said Court sitting together, and shall, when the subject-matter of the appeal is an interlocutory order, decree, or judgment, be heard before not less than two judges of the said Court sitting together.

Any doubt which may arise as to what decrees, orders, or judgments are final, and what are interlocutory, shall be determined by the Court of Appeal.

Subject to the provisions contained in this section the Court of Appeal may sit in two divisions at the same time.

Amend-  
ment of  
a. 60 of 36  
& 37 Vict.  
c. 66, as to  
district  
registrars.

13. Whereas by section sixty of the principal Act it is provided that for the purpose of facilitating the prosecution in country districts of legal proceedings, it shall be lawful for Her Majesty by Order in Council from time



to time to direct that there shall be district registrars in such places as shall be in such Order mentioned for districts to be thereby defined; and whereas it is expedient to amend the said section, be it therefore enacted that—

District  
Registrars.

Where any such Order has been made, two persons may, if required, be appointed to perform the duties of district registrar in any district named in the Order, and such persons shall be deemed to be joint district registrars, and shall perform the said duties in such manner as may from time to time be directed by the said Order, or any Order in Council amending the same.

Moreover, the registrar of any inferior Court of record having jurisdiction in any part of any district defined by such Order (other than a County Court) shall, if appointed by Her Majesty, be qualified to be a district registrar for the said district, or for any and such part thereof as may be directed by such Order or any Order amending the same.

Every district registrar shall be deemed to be an officer of the Supreme Court, and be subject accordingly to the jurisdiction of such Court, and of the divisions thereof.

As to proceedings in district registries; see secs. 60–62 and 64–66 of the Judicature Act, 1873, *ante*, p. 135–138, and Order V., Rules 1–3, and Order XII., Rules 1–5, Order XIX., Rule 29, and Order XXXV., *post*, pp. 196, 208, 232, 233, *et seq.*

By an Order in Council dated the 12th of August, and published in the *London Gazette* of the 24th of August, 1875, it is ordered—

“That there shall be district registrars in the places of Liverpool, Manchester, and Preston, and the district registrar at Liverpool of the High Court of Admiralty, and the district prothonotary at Liverpool of the Court of Common Pleas at Lancaster, shall be and are hereby appointed the district registrars in Liverpool; and the district prothonotary at Manchester of the said Court of Common Pleas shall be and is hereby appointed the district registrar in Manchester; and the district prothonotary at Preston of the said Court of Common Pleas shall be and is hereby appointed the district registrar at Preston; and that the district for each place shall be the district now assigned to each such district prothonotary, under the provisions and authority of ‘The Common Pleas at Lancaster Amendment Act, 1869.’

“That there shall be a district registrar in Durham, and that the district prothonotary of the Court of Pleas at Durham shall be



District  
Registrars.

and is hereby appointed the district registrar in Durham; and that the district shall be the district, for the time being, of the County Court holden at Durham.

“That, in the places mentioned in the schedule annexed there shall be district registrars, and that the registrar of the County Court held in any such place shall be and is hereby appointed the district registrar in such place, and that the district for each such place shall be the district, for the time being, of the County Court holden at such place.

“C. L. PEEL.

“SCHEDULE.—Bangor, Barnsley, Barnstaple, Bedford, Birkenhead, Birmingham, Boston, Bradford, Bridgewater, Brighton, Bristol, Bury St. Edmunds, Cambridge, Cardiff, Carlisle, Carmarthen, Cheltenham, Chester, Colchester, Derby, Dewsbury, Dover, Dorchester, Dudley, East Stonehouse, Exeter, Gloucester, Great Grimsby, Great Yarmouth, Halifax, Hanley, Hartlepool, Hereford, Huddersfield, Ipswich, Kingston-on-Hull, King's Lynn, Leeds, Leicester, Lincoln, Lowestoft, Maidstone, Newcastle-upon-Tyne, Newport (Monmouth), Newport (Isle of Wight), Newtown, Northampton, Norwich, Nottingham, Oxford, Pembroke Docks, Peterborough, Poole, Portsmouth, Ramsgate, Rochester, Sheffield, Shrewsbury, Southampton, Stockton-on-Tees, Sunderland, Swansea, Truro, Totnes, Wakefield, Walsall, Whitehaven, Wolverhampton, Worcester, York.”

Amend-  
ment of 36  
& 37 Vict.  
c. 66, s. 87,  
as to enact-  
ments re-  
lating to  
attorneys.

14. Whereas under section eighty-seven of the principal Act, solicitors and attorneys will, after the commencement of that Act, be called solicitors of the Supreme Court: Be it therefore enacted that—

The registrar of attorneys and solicitors in England shall be called the registrar of solicitors, and the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron, or any two of them, may, from time to time, by regulation adapt any enactments relating to attorneys, and any declaration, certificate, or form required under those enactments, to the solicitors of the Supreme Court under section eighty-seven of the principal Act.

Appeal  
from infe-  
rior Court  
of record.

15. It shall be lawful for Her Majesty from time to time, by Order in Council, to direct that the enactments relating to appeals from County Courts shall apply to any other inferior Court of record; and those enactments, subject to any exceptions, conditions, and limitations contained



in the Order, shall apply accordingly, as from the date mentioned in the Order.

See, as to County Courts and other inferior Courts, &c., *ante*, pp. 27 and 42; and ss. 88–91 of the Judicature Act, 1873, *ante*, p. 152.

16. The Rules of Court in the First Schedule to this Act shall come into operation at the commencement of this Act, and as to all matters to which they extend shall thenceforth regulate the proceedings in the High Court of Justice and Court of Appeal. But such Rules of Court, and also all such other Rules of Court (if any) as may be made after the passing and before the commencement of this Act and under the authority of the next section, may be annulled or altered by the authority by which new Rules of Court may be made after the commencement of this Act.

Rules in First Schedule in substitution for 36 & 37 Vict. c. 66, s. 69, and Schedule.

17. Her Majesty may at any time after the passing and before the commencement of this Act, by Order in Council, made upon the recommendation of the Lord Chancellor, and the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, and the Lords Justices of Appeal in Chancery, or any five of them, and the other Judges of the several Courts intended to be united and consolidated by the principal Act as amended by this Act, or of a majority of such other Judges, make any further or additional Rules of Court for carrying the principal Act and this Act into effect, and in particular for all or any of the following matters, so far as they are not provided for by the Rules in the First Schedule to this Act; that is to say,

Provision as to making, &c., of Rules of Court before or after the commencement of the Act,—in substitution for 36 & 37 Vict. c. 66, ss. 68, 69, 74, and schedule.

1. For regulating the sittings of the High Court of Justice and the Court of Appeal, and of any Divisional or other Courts thereof respectively, and of the Judges of the said High Court sitting in Chambers; and,
2. For regulating the pleading, practice, and procedure in the High Court of Justice and Court of Appeal; and,



3. Generally, for regulating any matters relating to the practice and procedure of the said Courts respectively, or to the duties of the officers thereof, or of the Supreme Court, or to the costs of proceedings therein.

In substitution for  
36 & 37  
Vict. c. 66,  
s. 74.

From and after the commencement of this Act, the Supreme Court may at any time, with the concurrence of a majority of the judges thereof present at any meeting for that purpose held (of which majority the Lord Chancellor shall be one), alter and annul any Rules of Court for the time being in force, and have and exercise the same power of making Rules of Court as is by this section vested in Her Majesty in Council on the recommendation of the said judges before the commencement of this Act.

All Rules of Court made in pursuance of this section shall be laid before each House of Parliament within such time and shall be subject to be annulled in such manner as is in this Act provided.

All Rules of Court made in pursuance of this section, if made before the commencement of this Act, shall from and after the commencement of this Act, and if made after the commencement of this Act shall from and after they come into operation, regulate all matters to which they extend, until annulled or altered in pursuance of this section.

The reference to certain judges in section twenty-seven of the principal Act shall be deemed to refer to the judges mentioned in this section as the judges on whose recommendation an Order in Council may be made.

See 36 & 37 Vict. c. 66, ss. 68, 69, 74, *ante*, pp. 138–9, 141. As to the High Court and Court of Appeal, *ante*, pp. 100, 104. As to the practice and procedure, see Rules of Court, *post*, p. 191, *et seq.*; and exceptions from rules, Order LXII., *post*. As to the costs of proceedings, see Additional Rules of Court by Order in Council, dated 12th August, 1875, and inserted in *London Gazette* of 24 August, 1875; and *post*, chap. vii.

Provision  
as to Rules  
of Probate,  
Divorce,  
and Admiralty  
Courts,  
being Rules  
of the

18. All Rules and Orders of Court in force at the time of the commencement of this Act in the Court of Probate, the Court for Divorce and Matrimonial Causes, and the Admiralty Court, or in relation to appeals from the Chief Judge in Bankruptcy, or from the Court of Appeal in Chancery in bankruptcy matters, except so far as they are



expressly varied by the First Schedule hereto or by Rules of Court made by Order in Council before the commencement of this Act, shall remain and be in force in the High Court of Justice and in the Court of Appeal respectively until they shall respectively be altered or annulled by any Rules of Court made after the commencement of this Act.

High Court,—  
in substitution for 36 & 37 Vict. c. 66, s. 70.

The present judge of the Probate Court and of the Court for Divorce and Matrimonial Causes shall retain, and the president for the time being of the Probate and Divorce Division of the High Court of Justice shall have, with regard to non-contentious or common form business in the Probate Court, the powers now conferred on the judge of the Probate Court by the thirtieth section of the twentieth and twenty-first years of Victoria, chapter seventy-seven, and the said judge shall retain, and the said president shall have, the powers as to the making of rules and regulations conferred by the fifty-third section of the twentieth and twenty-first years of Victoria, chapter eighty-five.

19. Subject to the First Schedule hereto and any Rules of Court to be made under this Act, the practice and procedure in all criminal causes and matters whatsoever in the High Court of Justice and in the Court of Appeal respectively, including the practice and procedure with respect to Crown Cases Reserved, shall be the same as the practice and procedure in similar causes and matters before the commencement of this Act.

Provision as to criminal procedure, subject to future Rules remaining unaltered,—in substitution for 36 & 37 Vict. c. 66, s. 71.

See 36 & 37 Vict. c. 66, s. 71, *ante*, p. 140; Order LXII. in Schedule I., *post*, chap. v.

20. Nothing in this Act or in the First Schedule hereto, or in any Rules of Court to be made under this Act, save as far as relates to the power of the Court for special reasons to allow depositions or affidavits to be read, shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury, or the rules of evidence, or the law relating to jurymen or juries.

Provision as to Act not affecting rules of evidence or juries,—in substitution for 36 & 37 Vict. c. 66, s. 72.

See *post*, p. 174, sec. 22 of this Act; and *ante*, p. 140, as to sec. 72 of 36 & 37 Vict. c. 72; and *ante*, p. 84.



Provision  
for saving  
of existing  
procedure  
of Courts  
when not  
inconsis-  
tent with  
this Act or  
Rules of  
Court,—in  
substitu-  
tion for 36  
& 37 Vict.  
c. 66, s. 73.

21. Save as by the principal Act or this Act, or by any Rules of Court, may be otherwise provided, all forms and methods of procedure which at the commencement of this Act were in force in any of the Courts whose jurisdiction is by the principal Act or this Act transferred to the said High Court and to the said Court of Appeal respectively, under or by virtue of any law, custom, general order, or rules whatsoever, and which are not inconsistent with the principal Act or this Act or with any Rules of Court, may continue to be used and practised, in the said High Court of Justice and the said Court of Appeal respectively, in such and the like cases, and for such and the like purposes, as those to which they would have been applicable in the respective Courts of which the jurisdiction is so transferred, if the principal Act and this Act had not passed.

Nothing in  
principal  
Act to pre-  
judice  
right to  
have issues  
submitted,  
&c.

22. Whereas by section forty-six of the principal Act it is enacted that “any judge of the said High Court sitting “in the exercise of its jurisdiction elsewhere than in a “Divisional Court may reserve any case, or any point in “a case, for the consideration of a Divisional Court, or “may direct any case or point in a case to be argued be- “fore a Divisional Court:” Be it hereby enacted, that nothing in the said Act, nor in any rule or order made under the powers thereof or of this Act, shall take away or prejudice the right of any party to any action to have the issues for trial by jury submitted and left by the judge to the jury before whom the same shall come for trial, with a proper and complete direction to the jury upon the law, and as to the evidence applicable to such issues:

Provided also, that the said right may be enforced either by motion in the High Court of Justice or by motion in the Court of Appeal founded upon an exception entered upon or annexed to the record.

See secs. 46, 93 of the Judicature Act, 1873, *ante*, pp. 129, 153; and sec. 20 of this Act, *ante*, p. 173; and also *ante*, p. 84; as to bills of exception, see *ante*, p. 88, and Order LVIII., Rule 1, *post*, chap. v.

Regulation  
of circuits.

23. Her Majesty may at any time after the passing of this Act, and from time to time, by Order in Council, pro-



vide in such manner and subject to such regulations as to <sup>Circuits</sup>  
Her Majesty may seem meet, for all or any of the follow- <sup>and C. C. C.</sup>  
ing matters :

1. For the discontinuance, either temporarily or permanently, wholly or partially, of any existing circuit, and the formation of any new circuit by the union of any counties or parts of counties, or partly in one way and partly in the other, or by the constitution of any county or part of a county to be a circuit by itself ; and in particular for the issue of commissions for the discharge of civil and criminal business in the county of Surrey to the judges appointed to sit for the trial by jury of causes and issues in Middlesex or London or any of them ; and,
2. For the appointment of the place or places at which assizes are to be holden on any circuit ; and,
3. For altering by such authority and in such manner as may be specified in the Order, the day appointed for holding the assizes at any place on any circuit in any case, where, by reason of the pressure of business or other unforeseen cause, it is expedient to alter the same ; and,
4. For the regulation, so far as may be necessary for carrying into effect any Order under this section, of the venue in all cases, civil and criminal, triable on any circuit or elsewhere.

Her Majesty may from time to time, by Order in Council, alter, add to, or amend any Order in Council made in pursuance of this section ; and in making any Order under this section may give any directions which it appears to Her Majesty to be desirable to give for the purpose of giving full effect to such order :

Provided that every Order in Council made under this section shall be laid before each House of Parliament within such time, and shall be subject to be annulled in such manner as is in this Act provided.

Any Order in Council purporting to be made in pursuance of this section shall have the same effect in all respects as if it were enacted in this Act.



Circuits  
and C. C. C.

The power hereby given to Her Majesty shall be deemed to be in addition to and not in derogation of any power already vested in Her Majesty in respect of the matters aforesaid; and all enactments in relation to circuits, or the places at which assizes are to be holden, or otherwise in relation to the subject-matter of any Order under this section, shall, so far as such enactments are inconsistent with such Order, be repealed thereby, whether such repeal is thereby expressly made or not; but all enactments relating to the power of Her Majesty to alter the circuits of the judges, or places at which assizes are to be holden, or the distribution of revising barristers among the circuits, or otherwise enabling or facilitating the carrying the objects of this section into effect, and in force at the time of the passing of the principal Act, shall continue in force, and shall, with the necessary variations, if any, apply, so far as they are applicable, to any alterations in or dealings with circuits, or places at which assizes are to be holden, made or to be made after the passing of this Act, or to any other provisions of any Order made under this section; and if any such Order is made for the issue of commissions for the discharge of civil and criminal business in the county of Surrey as before-mentioned in this section, that county shall for the purpose of the application of the said enactments be deemed to be a circuit, and the senior judge for the time being so commissioned, or such other judge as may be for the time being designated for that purpose by Order in Council, shall, in the month of July or August in every year, appoint the revising barristers for that county and the cities and boroughs therein.

The expression "assizes" shall in this section be construed to include sessions under any commission of oyer and terminer, or goal delivery, or any commission in lieu thereof issued under the principal Act.

The powers conferred by this section are very extensive, and sufficient, if acted upon, to alter entirely the present system of trial of both criminal and civil causes on circuit, as well as the business of the Central Criminal Court; see *ante*, p. 165, and *post*, p. 177.



As respects circuits, we may observe that they have been in existence Circuits  
and C. C. C. as far back as the thirteenth century, and have been regulated from time to time by several statutes, viz., 21 Edw. 1; 6 Ric. 2, c. 5; 11 Ric. 2, c. 11; 14 Hen. 6, c. 3; 34 & 35 Hen. 8, c. 26; 18 Eliz., c. 8; 14 Car. 2, c. 21, s. 1; 1 Geo. 1, stat. 2, c. 45, repealed by 30 & 31 Vict. c. 59; 3 Geo. 4, c. 10; 11 Geo. 4 & 1 Will. 4, c. 70, s. 19; 2 Will. 4, c. 47, s. 1; 3 & 4 Will. 4, c. 71; 6 & 7 Will. 4, c. 87, s. 8; 7 Will. 4 & 1 Vict. c. 24, s. 2; 2 & 3 Vict. c. 72; 12 Vict. c. 6; 5 & 6 Vict. c. 110; 17 & 18 Vict. c. 35; 22 & 23 Vict. c. 32, s. 18; 26 & 27 Vict. c. 122; and we must now add 36 & 37 Vict. c. 66, ss. 11, 16, 29, 68, 69, and the above section, 23 of 38 & 39 Vict. c. 77; see, *ante*, pp. 98, 101, 117, 138, 139.

As to the Central Criminal Court, we have already observed that it is made part of the High Court of Justice (sec. 16, *ante*, pp. 42, 101). This Court was established in 1834, pursuant to statute 4 & 5 Will. 4, c. 36, s. 2. It has jurisdiction over all treasons, murders, felonies, and misdemeanours committed within the city of London and county of Middlesex, and certain designated parts of the counties of Essex, Kent, and Surrey. By 19 Vict. c. 16, the Court of Queen's Bench has power to order, for trial at the Central Criminal Court, indictments for felonies and misdemeanours committed out of the jurisdiction of that Court: see also *ante*, p. 142.

24. Where any provisions in respect of the practice or procedure of any Courts the jurisdiction of which is transferred by the principal Act or this Act to the High Court of Justice or the Court of Appeal, are contained in any Act of Parliament, Rules of Court may be made for modifying such provisions to any extent that may be deemed necessary for adapting the same to the High Court of Justice and the Court of Appeal, without prejudice nevertheless to any power of the Lord Chancellor, with the concurrence of the Treasury, to make any Rules with respect to the Paymaster General, or otherwise.

Additional  
power as to  
regulation  
of practice  
and proce-  
dure by  
Rules of  
Court.

Any provisions relating to the payment, transfer, or deposit into, or in, or out of any Court of any money or property, or to the dealing therewith, shall, for the purposes of this section, be deemed to be provisions relating to practice and procedure.

1 The Lord Chancellor, with the concurrence of the Treasury, may from time to time, by order, determine to what



accounts and how intituled any such money or property as last aforesaid, whether paid, transferred, or deposited before or after the commencement of this Act, is to be carried, and modify all or any forms relating to such accounts; and the governor and company of the Bank of England, and all other companies, bodies corporate, and persons, shall make such entries and alterations in their books as may be directed by the Lord Chancellor, with the concurrence of the Treasury, for the purpose of carrying into effect any such order.

See *ante*, pp. 160, 168, 171.

Orders and Rules to be laid before Parliament, and may be annulled on address from either House.

25. Every Order in Council and Rule of Court required by this Act to be laid before each House of Parliament shall be so laid within forty days next after it is made, if Parliament is then sitting, or if not, within forty days after the commencement of the then next ensuing session; and if an address is presented to Her Majesty by either House of Parliament, within the next subsequent forty days on which the said House shall have sat, praying that any such Rule or Order may be annulled, Her Majesty may thereupon, by Order in Council, annul the same; and the Rule or Order so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

This section shall come into operation immediately on the passing of this Act.

See *ante*, p. 171, and *post*, p. 191.

Fixing and collection of fees in High Court and Court of Appeal.

26. The Lord Chancellor, with the advice and consent of the judges of the Supreme Court, or any three of them, and with the concurrence of the Treasury, may, either before or after the commencement of this Act, by order, fix the fees and per-centages (including the per-centage on estates of lunatics) to be taken in the High Court of Justice or in the Court of Appeal, or in any court created by any commission or in any office which is connected with any of those courts, or in which any business con-



ducted with any of those courts is conducted, or by any officer paid wholly or partly out of public moneys who is attached to any of those courts, or the Supreme Court, or any judge of those courts, including the masters and other officers in lunacy, and may from time to time by order increase, reduce, or abolish all or any of such fees and per-centages, and appoint new fees and per-centages to be taken in the said courts or offices, or any of them, or by any such officer as aforesaid.

Any order made in pursuance of this section shall be binding on all the courts, offices, and officers to which it refers, in the same manner as if it had been enacted by Parliament.

All such fees and per-centages shall (save as otherwise directed by the order) be paid into the receipt of Her Majesty's Exchequer, and be carried to the Consolidated Fund, and with respect thereto the following rules shall be observed :

1. The fees and per-centages shall, except so far as the order may otherwise direct, be taken by stamps, and if not taken by stamps shall be taken, applied, accounted for, and paid over in such manner as may be directed by the order.
2. Such stamps shall be impressed or adhesive, as the Treasury from time to time direct.
3. The Treasury, with the concurrence of the Lord Chancellor, may from time to time make such rules as may seem fit for publishing the amount of the fees and regulating the use of such stamps, and particularly for prescribing the application thereof to documents from time to time in use or required to be used for the purposes of such stamps, and for insuring the proper cancellation of stamps and for keeping accounts of such stamps.
4. Any document which ought to bear a stamp in pursuance of this Act, or any rule or order made thereunder, shall not be received, filed, used, or admitted in evidence unless and until it is properly stamped within the time prescribed by the rules



under this section regulating the use of stamps, but if any such document is through mistake or inadvertence received, filed, or used without being properly stamped, the Lord Chancellor or the Court may, if he or it shall think fit, order that the same be stamped as in such order may be directed.

An order by the Lord Chancellor as to court fees on stamps is in preparation, and if issued in time will be inserted after chapter viii., *post*.

5. The Commissioners of Inland Revenue shall keep such separate accounts of all money received in respect of stamps under this Act as the Treasury may from time to time direct, and, subject to the deduction of any expenses incurred by those Commissioners in the execution of this section, the money so received shall, under the direction of the Treasury, be carried to and form part of the Consolidated Fund.
6. Any person who forges or counterfeits any such stamp, or uses any such stamp, knowing the same to be forged or counterfeit, or to have been previously cancelled or used, shall be guilty of forgery, and be liable on conviction to penal servitude for a term not exceeding seven years, or to imprisonment with or without hard labour for a term not exceeding two years.

An order under this section may abolish any existing fees and per-centages which may be taken in the said Courts or offices, or any of them, or by the said officers or any of them, but, subject to the provisions of any order made in pursuance of this section, the existing fees and per-centages shall continue to be taken, applied, and accounted for in the existing manner.

Provisions  
as to Lan-  
caster Fee  
Fund, and  
salaries,  
&c., of

27. Whereas by the Common Pleas at Lancaster Amendment Act, 1869, the fees taken by the prothonotaries and district prothonotaries in pursuance of that Act, are directed to be carried to the credit of "the prothonotaries



fee fund account of the county palatine of Lancaster," and certain salaries and expenses connected with the offices of the said prothonotaries and district prothonotaries are directed to be paid out of that account:

officers of  
courts at  
Lancaster  
and Dur-  
ham, 32  
& 33 Vict.  
c. 37.

And whereas, on the twenty-fourth day, of June, one thousand eight hundred and seventy-four, there was standing to the credit of that account a sum of ten thousand seven hundred and fifty-five pounds consolidated three pounds per centum Bank annuities, and one thousand eight hundred and ten pounds cash, or thereabouts:

And whereas the fees received in the Court of Pleas of Durham are applied in payment of disbursements connected with the office of the prothonotary of that Court, and any surplus of such fees is paid into the receipt of Her Majesty's Exchequer, and any deficiency of the amount of the said fees to pay such disbursements is charged on the Consolidated Fund of the United Kingdom:

And whereas after the commencement of the principal Act, the jurisdiction of the Court of Common Pleas at Lancaster and the Court of Pleas at Durham is by that Act transferred to and vested in the High Court of Justice, and it is expedient to make further provision respecting the expenses of those Courts, and the said stock and cash standing to the credit of the prothonotaries fee fund account of the county palatine of Lancaster:

Be it therefore enacted that,—

After the commencement of the principal Act there shall be paid out of moneys provided by Parliament such sums by way of salary or remuneration to the prothonotaries and district prothonotaries of the Court of Common Pleas at Lancaster and the Court of Common Pleas at Durham and their clerks, and such sums for rent, taxes, and other outgoings at their offices, as the Lord Chancellor, with the concurrence of the Treasury, may from time to time direct.

As soon as each prothonotary and district prothonotary of the Court of Common Pleas at Lancaster has accounted for and paid all fees and moneys which he shall have received by virtue of his said office, the Chancellor of the



32 & 33  
Vict. c. 37.

Duchy of Lancaster shall cause any security given by such officer in pursuance of section seventeen of the Common Pleas at Lancaster Amendment Act, 1869, to be cancelled, and delivered up, or otherwise discharged.

As soon as may be after the commencement of the principal Act the Treasury and the Chancellor of the duchy and county palatine of Lancaster shall ascertain the amount of stock and cash standing to the credit of the prothonotaries fee fund account of the county palatine of Lancaster, after paying thereout to the receiver general of the revenues of the Duchy of Lancaster the amount of the fees remaining in the prothonotary's hands on the twenty-fourth day of October one thousand eight hundred and sixty-nine, and paid to that account in pursuance of section seventeen of the last-mentioned Act, and all other sums justly due to Her Majesty in right of Her said duchy and county palatine; and the Treasury shall by warrant direct the Governor and Company of the Bank of England to transfer to the Commissioners for the Reduction of the National Debt the amount of stock and cash so ascertained and either to cancel the stock in their books or otherwise dispose of the same as may be directed by the warrant; and the Governor and Company of the Bank of England shall transfer the stock and cash, and cancel or otherwise dispose of the stock according to the warrant, without any order from the Lord Chancellor or the Chancellor of the said duchy and county palatine or any other person.

The Commissioners for the Reduction of the National Debt shall apply all cash transferred to them in pursuance of this section in the purchase of Bank Annuities which shall be cancelled or otherwise disposed of in like manner as the said stock.

Annual  
account of  
fees and  
expendi-  
ture.

28. The Treasury shall cause to be prepared annually an account for the year ending the thirty-first day of March, showing the receipts and expenditure during the preceding year in respect of the High Court of Justice and the Court of Appeal, and of any Court, office, or officer, the fees taken in which or by whom can be fixed in pursuance of this Act.



Such account shall be made out in such form and contain such particulars as the Treasury, with the concurrence of the Lord Chancellor, may from time to time direct.

Every officer by whom or in whose office fees are taken which can be fixed in pursuance of this Act, shall make such returns and give such information as the Treasury may from time to time require for the purpose of enabling them to make out the said account.

The said account shall be laid before both Houses of Parliament within one month after the thirty-first day of March in each year, if Parliament is then sitting, or if not, then within one month after the next meeting of Parliament.

29. Whereas fines and other moneys paid into the Court of Queen's Bench for Her Majesty's use are received by the Queen's coroner and attorney, and out of such moneys there is paid in pursuance of a writ of privy seal an annual sum of forty pounds, at the rate of ten pounds for every term, to the second judge of the Court of Queen's Bench, and by section seven of the Act of the sixth year of King George the Fourth, chapter eighty-four, it is enacted that the said termly allowance of ten pounds shall continue to be paid to the said second judge in addition to his salary :

Amend-  
ment of  
law as to  
payments  
to senior  
puisne  
Judge of  
Queen's  
Bench and  
Queen's  
coroner.

And whereas out of the said moneys there is also payable in pursuance of the said writ of privy seal an annual sum of ten pounds to the Queen's coroner and attorney :

And whereas it is expedient to determine such payments :

Be it therefore enacted as follows :

After the passing of this Act the said sums of forty pounds and ten pounds a year shall cease to be payable by the Queen's coroner and attorney out of the above-mentioned moneys.

So long as the person who on the first day of March one thousand eight hundred and seventy-five was the second judge of the Court of Queen's Bench continues to be such second judge, there shall be payable to him out of the Consolidated Fund of the United Kingdom the annual



sum of forty pounds in addition to his salary, and that annual sum shall be payable to him by instalments of ten pounds at the like times at which the said termly allowance of ten pounds has heretofore been payable to him, or at such other times as the Treasury, with the consent of the judge, may direct.

So long as the person who on the first day of March one thousand eight hundred and seventy-five was the Queen's coroner and attorney continues to hold that office, there shall be payable to him out of moneys provided by Parliament the annual sum of ten pounds, and such sum shall be payable to him at the like time at which the said annual sum of ten pounds has heretofore been payable to him, or at such other time as the Treasury, with the consent of such Queen's coroner or attorney, may direct.

Amendment of 35 & 36 Vict. c. 44, as to the transfer of Government securities to and from the Paymaster General on behalf of the Court of Chancery and the National Debt Commissioners.

30. Whereas by section sixteen of "The Court of Chancery Funds Act, 1872," it is enacted that an order of the Court of Chancery may direct securities standing to the account of the Paymaster General on behalf of the Court of Chancery to be converted into cash, and that where such order refers to Government securities, such securities shall be transferred to the Commissioners for the Reduction of the National Debt in manner therein mentioned:

And whereas the said section contains no provision for the converse cases of the conversion of cash into securities, and the transfer of securities from the said commissioners to the account of the Paymaster General on behalf of the Court of Chancery:

And whereas such conversion and transfer, and the other matters provided by the said section, can be more conveniently provided for by rules made in pursuance of section eighteen of the said Act; and it is expedient to remove doubts with respect to the power to provide by such rules for the investment in securities of money in court, and the conversion into money of securities in court:

Be it therefore enacted as follows:

Section sixteen of "The Court of Chancery Funds Act, 1872," is hereby repealed.



Rules may from time to time be made in pursuance of section eighteen of "The Court of Chancery Funds Act, 1872," with respect to the investment in securities of money in Court, and the conversion into money of securities in court, and with respect to the transfer to the Commissioners for the Reduction of the National Debt of Government securities ordered by the Court to be sold or converted into cash, and to the transfer by those Commissioners to the Paymaster General for the time being, on behalf of the Court of Chancery, of Government securities ordered by the Court of Chancery to be purchased.

This section shall come into operation on the passing of this Act, and shall be construed together with "The Court of Chancery Funds Act, 1872," and shall be subject to any alteration in that Act made by or in pursuance of the principal Act or this Act.

31. Whereas under the Lunacy Regulation Act, 1853, it is provided that there shall be a secretary to the visitors of lunatics therein mentioned, and it is expedient to abolish that office: Be it therefore enacted as follows:

Abolition  
of secretary  
to the  
visitors of  
lunatics.  
16 & 17  
Vict. c. 70.

After the passing of this Act there shall cease to be a secretary to the visitors of lunatics.

The Treasury shall award, out of moneys provided by Parliament, to the person who holds at the passing of this Act the office of secretary to the visitors of lunatics such compensation, by way of annuity or otherwise, as, having regard to the conditions on which he was appointed to his office, the nature, salary, and emoluments of his office, and the duration of his services, they may think just and reasonable, so that the same be granted in accordance with the provisions and subject to the conditions contained in the Superannuation Act, 1859.

32. Whereas by section nineteen of "The Bankruptcy Repeal and Insolvent Court Act, 1869," it is enacted as follows: "All dividends declared in any Court acting under the Acts relating to bankruptcy or the relief of insolvent debtors which remain unclaimed for five years after the commencement of this Act, if declared before that commencement, and for five years after the declara-

22 Vict.  
c. 26.  
Amend-  
ment of 32  
& 33 Vict.  
c. 83, s. 19,  
and 32 &  
33 Vict.  
c. 71, s.  
116, as to  
payment of



unclaimed  
dividends  
to persons  
entitled.

“ tion of the dividends if declared after the commence-  
“ ment of this Act, and all undivided surpluses of estates  
“ administered under the jurisdiction of such Court which  
“ remain undivided for five years after the declaration of  
“ a final dividend in the case of bankruptcy, or for five  
“ years after the close of an insolvency under this Act,  
“ shall be deemed vested in the Crown, and shall be dis-  
“ posed of as the Commissioners of Her Majesty’s  
“ Treasury direct; provided that at any time after  
“ such vesting the Lord Chancellor may, if he thinks fit,  
“ by reason of the disability or absence beyond seas of  
“ the person entitled to the sum so vested, or for any  
“ other reason appearing to him sufficient, direct that the  
“ sum so vested shall be repaid out of moneys provided  
“ by Parliament, and shall be distributed as it would have  
been if there had been no such vesting: ”

32 & 33  
Vict. c. 71.

And whereas a similar enactment with respect to un-  
claimed dividends in bankruptcy was made by section one  
hundred and sixteen of “ The Bankruptcy Act, 1869: ”

And whereas it is expedient to give to persons entitled  
to any such unclaimed dividends or other sums greater  
facilities for obtaining the same: Be it therefore enacted  
as follows:

32 & 33  
Vict. cc.  
83, 71.

Any Court having jurisdiction in the matter of any  
bankruptcy or insolvency, upon being satisfied that any  
person claiming is entitled to any dividend or other pay-  
ment out of the moneys vested in the Crown in pursuance  
of section nineteen of “ The Bankruptcy Repeal and Insol-  
vent Court Act, 1869,” or of section one hundred and  
sixteen of “ The Bankruptcy Act, 1869,” may order pay-  
ment of the same in like manner as it might have done if  
the same had not by reason of the expiration of five years  
become vested in the Crown in pursuance of the said  
sections.

This section shall take effect as from the passing of this  
Act.

Repeal.

33. From and after the commencement of this Act  
there shall be repealed—

1. The Acts specified in the Second Schedule to this



Act, to the extent in the third column of that schedule mentioned, without prejudice to anything done or suffered before the said commencement under the enactments hereby repealed; also,

2. Any other enactment inconsistent with this Act or the principal Act.

34. Whereas, by the seventy-seventh section of the principal Act, it is provided that, upon the occurrence of a vacancy in the office of any officer coming within the provisions of the said section, the Lord Chancellor, with the concurrence of the Treasury, may, in the event of such office being considered unnecessary, abolish the same, or may reduce the salary, or alter the designation or duties thereof, notwithstanding that the patronage thereof may be vested in an existing judge; but that nothing in the said Act contained shall interfere with the office of marshal attending any commissioner of assize: And whereas it is expedient to add to the said section: Be it enacted, that, upon the occurrence of any vacancy coming within the provisions of the said section, an appointment shall not be made thereto for the period of one month without the assent of the Lord Chancellor, given with the concurrence of the Treasury; and, further, the Lord Chancellor may, with the concurrence of the Treasury, suspend the making any appointment to such office for any period not later than the first day of January one thousand eight hundred and seventy-seven, and may, if it be necessary, make provision in such manner as he thinks fit for the temporary discharge, in the meantime, of the duties of such office.

As to vacancies in any office within s. 77 of principal Act.

See 36 & 37 Vict. c. 66, s. 77; *ante*, p. 143.

35. Be it enacted, that any person who, at the time of the commencement of this Act, shall hold the office of chamber clerk shall be eligible at any time thereafter for appointment to the like office, anything in the principal Act to the contrary notwithstanding; and that, if any such person shall be so appointed after the commencement of this Act, he shall, if the salary assigned to such office by or under the principal Act be less than the salary re-

Amendment of principal Act, s. 79, as to chamber clerks.



ceived by him at the time of the commencement of this Act, be entitled to receive a salary not less than that so formerly received by him, so long as he shall retain such office, but shall not be entitled to receive or claim any pension in respect of his service, unless the Treasury, in its absolute discretion, shall think fit to sanction the same.

See 36 & 37 Vict. c. 66, s. 79; *ante*, p. 146.



## FIRST SCHEDULE.

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### RULES OF COURT.

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[Note.—Where no other provision is made by the Act or these Rules the present procedure and practice remain in force.]

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*A Summary of Orders being the Rules of Court contained in the First Schedule of the Supreme Court of Judicature Act, 1875.*

These Orders are even more important than the Act itself, and we direct particular attention to Order 19 (a), relating to Pleadings in general, from which it will be observed that the Rules of Pleading there provided are substituted for those hitherto used in the Courts of Chancery, Common Law, Admiralty, and Probate. The Common Law Procedure Acts and the old forms of all the Courts will be of continuing use, and will frequently have to be engrafted more or less into the new forms. We have given copious references to the old forms and books of practice, and cited authorities in reference to the old and new Rules, which will be found noted under the Orders *seriatim* (b). We have also inserted in a subsequent chapter an analysis of the method of procedure in the Common Law and Chancery Courts, as the Judicature Act, 1875, expressly authorizes their adoption in certain cases (c).

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#### ORDER

1. *Form and commencement of action—Interpleaders.*
2. *Writ of summons—Indorsement—Service out of jurisdiction—Bills of exchange.*
3. *Indorsement of claim—See statement of claim, Order 21, post, p. 237.*

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(a) See post, p. 227.

(b) See pp. 191, et seq.

(c) See post, chap. viii.; and sec. 21, ante, p. 174.



## ORDER

4. *Indorsement of address.*
5. *Issue of writ of summons—Place of issue—When to choose division of Court—Generally—In particular actions.*
6. *Concurrent writs.*
7. *Disclosure by solicitors and plaintiffs.*
8. *Renewal of writ.*
9. *Service of writ of summons—Mode of Service—On particular defendants—Husband and wife—Infants—Lunatics—Partners—Corporations—In particular actions—Generally.*
10. *Substituted service.*
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12. *Appearance . . . . . Page 208*
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17. *Joinder of causes of action—Claims in bankruptcy—Husband and wife—Executors.*
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19. *Pleading generally, in substitution for Chancery—Common Law, Admiralty, and Probate pleadings . . . . . Pages 227–235*
20. *Pleading matters arising pending action.*
21. *Statement of claim.*
22. *Defence.*
23. *Discontinuance.*
24. *Reply and subsequent pleadings.*
25. *Close of pleadings.*
26. *Issues.*
27. *Amendment of pleadings.*
28. *Demurrers.*
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30. *Payment into Court.*
31. *Discovery and inspection—Interrogatories and affidavits . . . . . Pages 252–258*
32. *Admissions.*
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34. *Questions at law—Special case.*
35. *District registries—Proceedings in.*
36. *Trial—Notice and form of cause lists—Verdict and judgment—Assizes—Assessors—Referees.*
37. *Evidence generally—Viva voce—Affidavits—Printing thereof . . . . . Page 271*
38. *Evidence by affidavit, printing thereof.*
39. *Motions for new trial.*
40. *Motions for judgment.*
41. *Entry of judgments.*
42. *Execution.*
43. *Fieri facias and elegit.*
44. *Attachments.*
45. *Attachment of debts.*
46. *Charging of stock and shares and distringas.*
7. *Writs of sequestration.*



## ORDER

48. *Writs of possession.*
49. *Writs of delivery.*
50. *Change of parties by death.*
51. *Transfers and consolidation.*
52. *Interlocutory orders as to Mandamus, Injunctions, or interim preservation of property.*
53. *Motions and other applications.*
54. *Applications at Chambers.*
55. *Costs.*
56. *Notices—When in writing, and on what paper, and when printed.*
57. *Time—Calendar and lunar months—Long Vacation.*
58. *Appeals.*
59. *Rules—Effect of non-compliance therewith.*
60. *Officers.*
61. *Sittings and Vacations.*
62. *Exceptions from the Rules.*
63. *Interpretation of terms.*

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## ORDER I.

### FORM AND COMMENCEMENT OF ACTION.

1. All actions which have hitherto been commenced by writ in the Superior Courts of Common Law at Westminster, or in the Court of Common Pleas at Lancaster, or in the Court of Pleas at Durham, and all suits which have hitherto been commenced by bill or information in the High Court of Chancery, or by a cause in rem or in personam in the High Court of Admiralty, or by citation or otherwise in the Court of Probate, shall be instituted in the High Court of Justice by a proceeding to be called an action.

2. With respect to interpleader, the procedure and practice now used by Courts of Common Law under the Interpleader Acts, 1 & 2 Will. 4, c. 58, and 23 & 24 Vict. c. 126, shall apply to all actions and all the divisions of the High Court of Justice, and the application by a defendant shall be made at any time after being served with a writ of summons and before delivering a defence. Inter-pleaders.

3. All other proceedings in and applications to the High Court may, subject to these Rules, be taken and made in the same manner as they would have been taken



and made in any Court in which any proceeding or application of the like kind could have been taken or made if the Act had not been passed.

Order I., Rule 2. It does not seem that this rule takes away or interferes with a bill of interpleader in Equity where requisite, though it makes the present statutable legal procedure applicable to all divisions of the High Court.

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## ORDER II.

### WRIT OF SUMMONS AND PROCEDURE, ETC.

1. Every action in the High Court shall be commenced by a writ of summons, which shall be indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action, and which shall specify the Division of the High Court to which it is intended that the action should be assigned.

2. Any costs occasioned by the use of any more prolix or other forms of writs, and of indorsements thereon, than the forms hereinafter prescribed, shall be borne by the party using the same, unless the Court shall otherwise direct.

3. The writ of summons for the commencement of an action shall, except in the cases in which any different form is hereinafter provided, be in Form No. 1 in Part I. of Appendix (A) hereto, with such variations as circumstances may require.

4. No writ of summons for service out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be issued without the leave of a Court or judge.

5. A writ of summons to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be in Form No. 2 in Part I. of Appendix (A) hereto, with such variations as circumstances may require. Such notice shall be in Form No. 3 in the same part, with such variations as circumstances may require.



6. With respect to actions upon a bill of exchange or promissory note, commenced within six months after the same shall have become 'due and payable, the procedure under the Bills of Exchange Act, 18 & 19 Vict. c. 67, shall continue to be used. <sup>Writ of summons.</sup>

7. The writ of summons in every Admiralty action in rem shall be in Form No. 4 of Part I. of Appendix (A) hereto, with such variations as circumstances may require.

8. Every writ of summons, and also every other writ, shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Lord Chancellor, or if the office of Lord Chancellor shall be vacant, in the name of the Lord Chief Justice of England.

Order II., Rule 1. See Order III., Rule 2, *infra*.

Order II., Rule 4. See Order XI., *post*, p. 206, as to service out of the jurisdiction.

Order II., Rule 5. As to when this notice is required, see 15 & 16 Vict. c. 76, s. 19, and notes thereto in Day's Com. Law Proc. Acts, p. 58.

As to the mode of serving such writs, see Order XI., *post*, p. 206.

Order II., Rule 8. This is a change. Each writ issued out of the Common Law Courts used to be tested in the name of the Lord Chief Justice or Lord Chief Baron of the Court from which it issued.

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### ORDER III.

#### INDORSEMENTS OF CLAIM.

1. The indorsement of claim shall be made on every writ of summons before it is issued.

2. In the indorsement required by Order II., Rule 1, it shall not be essential to set forth the precise ground of complaint, or the precise remedy or relief to which the plaintiff considers himself entitled. The plaintiff may, by leave of the Court or judge, amend such indorsement so as to extend it to any other cause of action or any additional remedy or relief.

3. The indorsement of claim may be to the effect of



Indorse-  
ments of  
claim.

such of the forms in Part II. of Appendix (A) hereto as shall be applicable to the case, or if none be found applicable then such other similarly concise form as the nature of the case may require.

4. If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, the indorsement shall show, in manner appearing by the statement in Appendix (A) hereto, Part II., Sec. VIII., or by any other statement to the like effect, in what capacity the plaintiff or defendant sues or is sued.

5. In Probate actions the indorsement shall show whether the plaintiff claims as creditor, executor, administrator, residuary legatee, legatee, next of kin, heir-at-law, devisee, or in any and what other character.

6. In all actions where the plaintiff seeks merely to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising upon a contract, express or implied, as, for instance, on a bill of exchange, promissory note, cheque, or other simple contract debt, or on a bond or contract under seal for payment of a liquidated amount of money, or on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt, or on a guaranty, whether under seal or not, where the claim against the principal is in respect of such debt or liquidated demand, bill, cheque, or note, or on a trust, the writ of summons may be specially indorsed with the particulars of the amount sought to be recovered, after giving credit for any payment or set-off.

7. Wherever the plaintiff's claim is for a debt or liquidated demand only, the indorsement, beside stating the nature of the claim, shall state the amount claimed for debt, or in respect of such demand, and for costs respectively, and shall further state, that upon payment thereof within four days after service, or in case of a writ not for service within the jurisdiction within the time allowed for appearance, further proceedings will be stayed. Such statement may be in the form in Appendix (A) hereto, Part II., Sec. III. The defendant may, notwithstanding



such payment, have the costs taxed, and if more than one-sixth shall be disallowed, the plaintiff's solicitor shall pay the costs of taxation. Indorsements of claim.

8. In all cases of ordinary account, as, for instance, in the case of a partnership or executorship or ordinary trust account, where the plaintiff, in the first instance, desires to have an account taken, the writ of summons shall be indorsed with a claim that such account be taken.

Order III., Rule 5. This indorsement must be verified by affidavit.

See Order V., Rule 10, *post*, p. 198.

Order III., Rule 6. With regard to the plaintiff who issues a writ specially indorsed being able to sign final judgment, unless the defendant can shew cause to induce a judge to allow him to appear. See Order XIV., *post*, p. 216.

With regard to cases in which an action, where the writ has been so indorsed, may be removed from a district registry. See Order XXXV., Rule 11, *post*, p. 262.

Order III., Rule 8. See Order XV., *post*, p. 218, as to the course to be adopted where there is no appearance to a writ indorsed under this rule; and Order XXI., *post*, p. 237, as to statement of claim.

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## ORDER IV.

### INDORSEMENT OF ADDRESS.

1. The solicitor of a plaintiff suing by a solicitor shall indorse upon every writ of summons and notice in lieu of service of a writ of summons the address of the plaintiff, and also his own name or firm and place of business, and also, if his place of business shall be more than three miles from Temple Bar, another proper place, to be called his address for service, which shall not be more than three miles from Temple Bar, where writs, notices, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him. And where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor.

2. A plaintiff suing in person shall indorse upon every



Inclusion  
ment of  
address.

writ of summons and notice in lieu of service of a writ of summons his place of residence and occupation, and also, if his place of residence shall be more than three miles from Temple Bar, another proper place, to be called his address for service, which shall not be more than three miles from Temple Bar, where writs, notices, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him.

*[The above two Rules are to apply to all cases in which the writ of summons is issued out of the London office, or out of a district registry where the defendant has the option of entering an appearance either in the district registry or the London office.]*

3. In all other cases where a writ of summons is issued out of a district registry, it shall be sufficient for the solicitor to give on the writ the address of the plaintiff and his own name or firm and his place of business within the district, or for the plaintiff if he sues in person to give on the writ his place of residence and occupation, and if his place of residence be not within the district, an address for service within the district.

Order IV., Rule 2. This rule and the preceding one are merely re-enactments of the old practice, except that Temple Bar has been made the centre instead of the General Post Office: see 15 & 16 Vict. c. 76, s. 6; and R. G. H. T., 1853, 165 and 166.

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## ORDER V.

### ISSUE OF WRITS OF SUMMONS.

#### 1. *Place of issue.*

1. In any action other than a Probate action, the plaintiff wherever resident may issue a writ of summons out of the registry of any district.

2. In all cases where a defendant neither resides nor carries on business within the district out of the registry whereof a writ of summons is issued, there shall be a state-



ment on the face of the writ of summons that such defendant may cause an appearance to be entered at his option either at the district registry or the London office, or a statement to the like effect.

Issue of  
writs of  
summons.

3. In all cases where a defendant resides or carries on business within the district, and a writ of summons is issued out of the district registry, there shall be a statement on the face of the writ of summons that the defendant do cause an appearance to be entered at the district registry, or to the like effect.

*2. Option to choose division in certain cases.*

4. Subject to the power of transfer, every person by whom any cause or matter may be commenced in the High Court of Justice which would have been within the non-exclusive cognisance of the High Court of Admiralty if the said Act had not passed, shall assign such cause or matter to any one of the divisions of the said High Court, including the Probate, Divorce, and Admiralty Division, as he may think fit, by marking the document by which the same is commenced with the name of the Division, and giving notice thereof to the proper officer of the Court. If so marked for the Chancery Division the same shall be assigned to one of the judges of such Division by marking the same with the name of such of the said judges as the plaintiff or petitioner (subject to such power of transfer) may think fit.

*3. Generally.*

5. Writs of summons shall be prepared by the plaintiff or his solicitor, and shall be written or printed, or partly written and partly printed, on paper of the same description as hereby directed in the case of proceedings directed to be printed.

6. Every writ of summons shall be sealed by the proper officer, and shall thereupon be deemed to be issued.

7. The plaintiff or his solicitor shall, on presenting any writ of summons for sealing, leave with the officer a copy, written or printed, or partly written and partly printed, on paper of the description aforesaid, of such writ, and all the indorsements thereon, and such copy shall be signed



Issue of  
writs of  
summons.

by or for the solicitor leaving the same, or by the plaintiff himself if he sues in person.

8. The officer receiving such copy shall file the same, and an entry of the filing thereof shall be made in a book to be called the Cause Book, which is to be kept in the manner in which Cause Books have heretofore been kept by the Clerks of Records and Writs in the Court of Chancery, and the action shall be distinguished by the date of the year, a letter, and a number, in the manner in which causes are now distinguished in such last-mentioned Cause Books.

9. Notice to the proper officer of the assignment of an action to any division of the Court under section 11 of the Supreme Court of Judicature Act, 1875, or under Rule 4 of this Order, shall be sufficiently given by leaving with him the copy of the writ of summons.

#### 4. *In particular Actions.*

10. The issue of a writ of summons in Probate actions shall be preceded by the filing of an affidavit made by the plaintiff or one of the plaintiffs in verification of the indorsement on the writ.

11. In Admiralty actions in rem no writ of summons shall issue until an affidavit by the plaintiff or his agent has been filed, and the following provisions complied with :

(a.) The affidavit shall state the name and description of the party on whose behalf the action is instituted, the nature of the claim, the name and nature of the property to be arrested, and that the claim has not been satisfied.

(b.) In an action of wages the affidavit shall state the national character of the vessel proceeded against; and if against a foreign vessel, that notice of the institution of the action has been given to the Consul of the State to which the vessel belongs, if there be one resident in London [*a copy of the notice shall be annexed to the affidavit*].

(c.) In an action of bottomry, the bottomry bond, and



if in a foreign language also a notarial translation thereof, shall be produced for the inspection and perusal of the registrar, and a copy of the bond, or of the translation thereof, certified to be correct, shall be annexed to the affidavit.

Issue of writs of summons.

- (d.) In an action of distribution of salvage the affidavit shall state the amount of salvage money awarded or agreed to be accepted, and the name, address, and description of the party holding the same.
- (e.) The Court or judge may in any case, if he think fit, allow the writ of summons to issue although the affidavit may not contain all the required particulars. In a wages cause he may also waive the service of a notice, and in a cause of bottomry the production of the bond.

12. If, when any property is under arrest in Admiralty, a second or subsequent action is instituted against the same property, the solicitor in such second action may, subject to the preceding Rules, take out a writ of summons in rem and cause a caveat against the release of the property to be entered in the Caveat Release Book hereinafter mentioned.

Order V., Rules 1-3. See Order XXXV., *post*, regulating proceedings in District Registries, and shewing how and under what circumstances actions can be removed to London.

As to whether when a writ is issued out of a District Registry the appearance should be there or in London, see Order XII., Rules 1-9, *post*, p. 208. See additional Order in Council, dated 12th August, appointing District Registrars, and printed in *London Gazette* of 24th August, 1875; *post*, chap. vii.

Order V., Rule 4. See sec. 11 of this Act, *ante*, p. 167.

Order V., Rule 5. The writ was formerly on parchment: 1 Chit. Prac. 198.

Order V., Rule 9. Sec. 11 of this Act is in substitution for Sec. 35 of the Judicature Act, 1873, that section having been repealed, *ante*, p. 167.

Order V., Rule 10. As to what this indorsement must contain, see Order III., rule 5, *ante*, p. 194.

Order V., Rule 12. This rule and the preceding one are very similar in their nature to the former rules in the Court of Admiralty. See Rules and Orders, 1859, 8-11, 13, 16, and 30.



## ORDER VI.

### CONCURRENT WRITS.

Concurrent  
writs.

1. The plaintiff in any action may, at the time of or at any time during twelve months after the issuing of the original writ of summons, issue one or more concurrent writ or writs, each concurrent writ to bear teste of the same day as the original writ, and to be marked with a seal bearing the word "concurrent," and the date of issuing the concurrent writ; and such seal shall be impressed upon the writ by the proper officer: Provided always, that such concurrent writ or writs shall only be in force for the period during which the original writ in such action shall be in force.

2. A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service, or whereof notice in lieu of service is to be given, out of the jurisdiction; and a writ for service, or whereof notice in lieu of service is to be given, out of the jurisdiction may be issued and marked as a concurrent writ with one for service within the jurisdiction.

Order VI., Rule 1. This is nearly the same as the present practice under 15 & 16 Vict. c. 76, s. 9, except that the time of issuing the concurrent writ is extended to twelve instead of being limited to six months after issuing the original writ as at present. Day's Com. Law Procedure (4th ed.), 36; see Order VIII., Rule 1, *post*, p. 201.

Order VI., Rule 2. This rule is almost identical with 15 & 16 Vict. c. 76, s. 22, therefore the present practice remains unaltered. Day's Com. Law Procedure, 60.

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## ORDER VII.

### DISCLOSURE BY SOLICITORS AND PLAINTIFFS.

1. Every solicitor whose name shall be indorsed on any writ of summons shall, on demand in writing made by or on behalf of any defendant who has been served therewith or has appeared thereto, declare forthwith whether such



writ has been issued by him or with his authority or privity; and if such solicitor shall declare that the writ was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the Court or judge.

Disclosure  
by solicitor and  
plaintiffs.

2. When a writ is sued out by partners in the name of their firm, the plaintiffs or their solicitors shall, on demand in writing by or on behalf of any defendant, declare forthwith the names and places of residence of all the persons constituting the firm. And if the plaintiffs or their solicitor shall fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the Court or a judge may direct. And when the names of the partners are so declared, the action shall proceed in the same manner and the same consequences in all respects shall follow as if they had been named as the plaintiffs in the writ. But all proceedings shall, nevertheless, continue in the name of the firm.

Order VII., Rule 1. This is no more than an attorney was formerly bound to do by 15 & 16 Vict. c. 76, s. 7, and as that statute remains intact except so far as expressly altered by the Judicature Acts, 1873 and 1875, it would seem he may still be bound under that section to declare the profession, occupation, or quality of his client. The client's address, as has been already seen (Order IV., Rule 1, *ante*, p. 195), must be indorsed on the writ. See Day's Com. Law Procedure, 33, 34.

Order VII., Rule 2. This rule is rendered necessary by the provision in Order XVI., Rule 10, *post*, p. 220, that partners may sue and be sued in the names of their firms, a convenience hitherto unknown in our law, except in the case of companies incorporated under charter, the Joint Stock Companies Acts, or a private Act of Parliament.

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## ORDER VIII.

### RENEWAL OF WRIT.

1. No original writ of summons shall be in force for more than twelve months from the day of the date thereof,



Renewal of writ.

including the day of such date; but if any defendant therein named shall not have been served herewith, the plaintiff may, before the expiration of the twelve months, apply to a judge, or the district registrar, for leave to renew the writ; and the judge or registrar, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original or concurrent writ of summons be renewed for six months from the date of such renewal, and so from time to time during the currency of the renewed writ. And the writ shall in such case be renewed by being marked with a seal bearing the date of the day, month, and year of such renewal; such seal to be provided and kept for that purpose at the proper office, and to be impressed upon the writ by the proper officer, upon delivery to him by the plaintiff or his solicitor of a memorandum in Form No. 5 in Appendix (A), Part I.; and a writ of summons so renewed shall remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ of summons.

2. The production of a writ of summons purporting to be marked with the seal of the Court, shewing the same to have been renewed in manner aforesaid, shall be sufficient evidence of its having been so renewed, and of the commencement of the action as of the first date of such renewed writ for all purposes.

Order VIII., Rule 1. This provision is nearly the same as that made by s. 11 of 15 & 46 Vict. c. 76, except that the original writ is now in force for twelve months instead of six. See Order VI., Rule 1, *ante*, p. 200, extending the time for issuing a concurrent writ in the same manner.

Order VIII., Rule 2. This rule is identical with 15 & 16 Vict. c. 76, s. 13.



## ORDER IX.

## SERVICE OF WRIT OF SUMMONS.

1. *Mode of Service.*

1. No service of writ shall be required when the defendant, by his solicitor, agrees to accept service, and enters an appearance.

2. When service is required the writ shall, wherever it is practicable, be served in the manner in which personal service is now made, but if it be made to appear to the Court or to a judge that the plaintiff is from any cause unable to effect prompt personal service, the Court or judge may make such order for substituted or other service, or for the substitution of notice for service, as may seem just.

2. *On particular Defendants.*

3. When husband and wife are both defendants to the action, service on the husband shall be deemed good service on the wife, but the Court or a judge may order that the wife shall be served with or without service on the husband.

4. When an infant is a defendant to the action, service on his or her father or guardian, or if none, then upon the person with whom the infant resides, or under whose care he or she is, shall, unless the Court or judge otherwise orders, be deemed good service on the infant; provided that the Court or judge may order that service made or to be made on the infant shall be deemed good service.

5. When a lunatic or person of unsound mind, not so found by inquisition, is a defendant to the action, service on the committee of the lunatic, or on the person with whom the person of unsound mind resides, or under whose care he or she is, shall, unless the Court or judge otherwise orders, be deemed good service on such defendant.



### 3. *On Partners and other Bodies.*

Service of  
writ of  
summons.

6. Where partners are sued in the name of their firm, the writ shall be served either upon any one or more of the partners or at the principal place within the jurisdiction of the business of the partnership, upon any person having at the time of service the control or management of the partnership business there; and, subject to the Rules hereinafter contained, such service shall be deemed good service upon the firm.

7. Whenever, by any statute, provision is made for service of any writ of summons, bill, petition, or other process upon any corporation, or upon any hundred, or the inhabitants of any place, or any society or fellowship, or any body or number of persons, whether corporate or otherwise, every summons of writ may be served in the manner so provided.

### 4. *In particular Actions.*

8. Service of a writ of summons in an action to recover land may, in case of vacant possession, when it cannot otherwise be effected, be made by posting a copy of the writ upon the door of the dwelling-house or other conspicuous part of the property.

9. In Admiralty actions in rem, the writ shall be served by the marshal or his substitutes, whether the property to be arrested be situate within the Port of London or elsewhere within the jurisdiction of the Court, and the solicitor issuing the writ shall, within six days from the service thereof, file the same in the registry from which the writ issued.

10. In Admiralty actions in rem, service of a writ of summons against ship, freight, or cargo on board is to be effected by the marshal or his officer nailing or affixing the original writ for a short time on the main mast or on the single mast of the vessel, and, on taking off the process, leaving a true copy of it nailed or fixed in its place.



11. If the cargo has been landed or transhipped, service of the writ of summons to arrest the cargo and freight shall be effected by placing the writ for a short time on the cargo, and on taking off the process by leaving a true copy upon it. Service of writ of summons.

12. If the cargo be in the custody of a person who will not permit access to it, service of the writ may be made upon the custodian.

*Generally.*

13. The person serving a writ of summons shall, within three days at most after such service, indorse on the writ the day of the month and week of the service thereof, otherwise the plaintiff shall not be at liberty, in case of non-appearance, to proceed by default; and every affidavit of service of such writ shall mention the day on which such indorsement was made.

Order IX., Rule 1. This rule merely affirms the former practice. See Chit. Prac. 12th ed. 200.

Order IX., Rule 2. This rule, in conjunction with Order X., *post*, p. 206, requiring every application to a judge for an order for substituted service to be supported by an affidavit, leaves the practice as it was under 15 & 16 Vict. c. 76, s. 17.

Order IX., Rule 3. This is the same as formerly: 1 Chit. Prac. (12th ed.) 199. For the mode in which a married woman may sue and defend without her husband, see Order XVI., Rule 8, *post*, p. 220.

Order IX., Rule 4. This provision is entirely new. See also Order XVI., Rule 8, *post*, p. 220.

Order IX., Rule 5. This provision is also entirely new. See also Order XVIII., *post*, p. 227.

Order IX., Rule 6. This was not so formerly; it used to be necessary to serve each partner separately. This rule seems to follow from the provision in Order XVI., Rule 10, *post*, p. 220, enabling partners to sue and be sued in the name of their firm. Though sued in the name of the firm, they must nevertheless appear in their own names, though subsequent proceedings will continue in the name of the firm: Order XII., Rule 12, *post*, p. 209. See also Order XLII., Rule 8, *post*, as to the mode of issuing execution against partners.

Order IX., Rule 8. This is the same as before. See 15 & 16 Vict. c. 76, s. 170.

Order IX., Rule 9. This is in accordance with the former practice in the Court of Admiralty. Rules and Orders, 1859, Rule 14.



Service of  
writ of  
summons.

Order IX., Rule 10. This is in accordance with the previous practice of the Admiralty Court. See Williams and Bruce, pp. 192-194.

Order IX., Rule 13. This rule is identical with the previous practice as laid down in 15 & 16 Vict. c. 76, s. 15.

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## ORDER X.

### SUBSTITUTED SERVICE.

Every application to the Court or a judge, under Order IX., Rule 2, for an order for substituted or other service, or for the substitution of notice for service, shall be supported by an affidavit setting forth the grounds upon which the application is made.

This is as it was before. See 15 & 16 Vict. c. 76, s. 17. It is difficult to see why this order is not annexed to Order IX., Rule 2, *ante*, p. 203.

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## ORDER XI.

### SERVICE OUT OF THE JURISDICTION.

1. Service out of the jurisdiction of a writ of summons or notice of a writ of summons may be allowed by the Court or a judge whenever the whole or any part of the subject-matter of the action is land or stock, or other property situate within the jurisdiction, or any act, deed, will, or thing affecting such land, stock, or property, and whenever the contract which is sought to be enforced or rescinded, dissolved, annulled, or otherwise affected in any such action, or for the breach whereof damages or other relief are or is demanded in such action, was made or entered into within the jurisdiction, and whenever there has been a breach within the jurisdiction of any contract wherever made, and whenever any act or thing sought to be restrained or removed, or for which damages are sought to be recovered, was or is to be done or is situate within the jurisdiction.

2. In Probate actions service of a writ of summons or



notice of a writ of summons may by leave of the Court or judge be allowed out of the jurisdiction. Service out  
of the juris-  
diction.

3. Every application for an order for leave to serve such writ or notice on a defendant out of the jurisdiction shall be supported by evidence, by affidavit, or otherwise, showing in what place or country such defendant is or probably may be found, and whether such defendant is a British subject or not, and the grounds upon which the application is made.

4. Any order giving leave to effect such service or give such notice shall limit a time after such service or notice within which such defendant is to enter an appearance, such time to depend on the place or country where or within which the writ is to be served or the notice given.

5. Notice in lieu of service shall be given in the manner in which writs of summons are served.

Order XI., Rule 1. This is quite new. Formerly a writ could be served out of the jurisdiction without any permission at all; but, in order to proceed in default of appearance, it was necessary to satisfy the Court or a judge (*inter alia*) that there was a cause of action within the jurisdiction: 15 & 16 Vict. c. 76, ss. 18, 19. The words of this rule are somewhat different from those of the sections just mentioned, and are doubtless intended to avoid the inconvenience caused by the different construction put upon them by the Courts of Queen's Bench, Common Pleas, and Exchequer. See Day's Com. Law Procedure Act, pp. 45-59.

Order XI., Rule 2. This does not seem to prohibit parties out of the jurisdiction being served by means of advertisement, according to the direction of the judge. Rules, 1862, C. B. 19, 20.

Order XI., Rule 4. Formerly the plaintiff gave the defendant what notice he chose of the time in which he was to appear; but permission to proceed in default of appearance was never allowed unless the Court or judge thought the time so given was reasonable: 15 & 16 Vict. c. 76, s. 18.

Order XI., Rule 5. This was so formerly: 15 & 16 Vict. c. 76, s. 19.



## ORDER XII.

## APPEARANCE.

1. Except in the cases otherwise provided for by these Rules a defendant shall enter his appearance in London.

2. If any defendant to a writ issued in a district registry resides or carries on business within the district, he shall appear in the district registry.

3. If any defendant neither resides nor carries on business in the district, he may appear either in the district registry or in London.

4. If a sole defendant appears, or all the defendants appear in the district registry, or if all the defendants who appear in the district registry and the others make default in appearance, then, subject to the power of removal hereinafter provided, the action shall proceed in the district registry.

5. If the defendant appears, or any of the defendants appear, in London, the action shall proceed in London; provided that if the Court or a judge shall be satisfied that the defendant appearing in London is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, such Court or judge may order that the action may proceed in the district registry, notwithstanding such appearance in London.

6. A defendant shall enter his appearance to a writ of summons by delivering to the proper officer a memorandum in writing, dated on the day of the delivering the same, and containing the name of the defendant's solicitor, or stating that the defendant defends in person. A defendant who appears elsewhere than where the writ is issued shall on the same day give notice to the plaintiff of his appearance either by notice in writing served in the ordinary way or by prepaid letter posted on that day in due course of post.

7. The solicitor of a defendant appearing by a solicitor shall state in such memorandum his place of business, and, if the appearance is entered in the London office, a place,



to be called his address for service, which shall not be more than three miles from Temple Bar, and if the appearance is entered in a district registry, a place, to be called his address for service, which shall be within the district.

8. A defendant appearing in person shall state in such memorandum his address, and, if the appearance is entered in the London office, a place, to be called his address for service, which shall not be more than three miles from Temple Bar, and if the appearance is entered in a district registry, a place, to be called his address for service, which shall be within the district.

9. If the memorandum does not contain such address it shall not be received; and if any such address shall be illusory or fictitious, the appearance may be set aside by the Court or a judge, on the application of the plaintiff.

10. The memorandum of appearance shall be in the Form No. 6, Appendix (A), Part I., with such variations as the circumstances of the case may require.

11. Upon receipt of a memorandum of appearance, the officer shall forthwith enter the appearance in the cause book.

12. Where partners are sued in the name of their firm, they shall appear individually in their own names. But all subsequent proceedings shall, nevertheless, continue in the name of the firm.

13. If two or more defendants in the same action shall appear by the same solicitor, and at the same time, the names of all the defendants so appearing shall be inserted in one memorandum.

14. A solicitor not entering an appearance in pursuance of his written undertaking so to do on behalf of any defendant shall be liable to an attachment.

15. A defendant may appear at any time before judgment. If he appear at any time after the time limited for appearance, he shall, on the same day, give notice thereof to the plaintiff's solicitor, or to the plaintiff himself if he sues in person, and he shall not, unless the Court or a judge otherwise orders, be entitled to any further time for



Appear-  
ance.

delivering his defence, or for any other purpose, than if he had appeared according to the writ.

16. In Probate actions any person not named in the writ may intervene and appear in the action as heretofore, on filing an affidavit showing how he is interested in the estate of the deceased.

17. In an Admiralty action in rem any person not named in the writ may intervene and appear as heretofore, on filing an affidavit showing that he is interested in the res under arrest, or in the fund in the registry.

18. Any person not named as a defendant in a writ of summons for the recovery of land may by leave of the Court or judge appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or his tenant.

19. Any person appearing to defend an action for the recovery of land as landlord in respect of property whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord.

20. Where a person not named as defendant in any writ of summons for the recovery of land has obtained leave of the Court or judge to appear and defend, he shall enter an appearance according to the foregoing rules, intituled in the action against the party or parties named in the writ as defendant or defendants, and shall forthwith give notice of such appearance to the plaintiff's solicitor, or to the plaintiff if he sues in person, and shall in all subsequent proceedings be named as a party defendant to the action.

21. Any person appearing to a writ of summons for the recovery of land shall be at liberty to limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in his memorandum of appearance or in a notice intituled in the cause, and signed by him or his solicitor; such notice to be served within four days after appearance; and an appearance where the defence is not so limited shall be deemed an appearance to defend for the whole.

22. The notice mentioned in the last preceding Rule



may be in the Form No. 7 in Part I. of Appendix (A) <sup>Appear</sup> hereto, with such variations as circumstances may require. <sup>ance.</sup>

Order XII., Rule 5. As to proceedings in district registries, see Order XXXV., *post*, p. 260

Order XII., Rules 7 and 8. These two rules are nearly identical with the old practice. See 15 & 16 Vict. c. 76, s. 30, and R. G. H. T. 1853, rr. 165, 166.

Order XII., Rule 12. Partners can now sue and be sued in the name of their firm. See Order IX., Rule 6, *ante*, p. 204, and Order XVI., Rule 10, *post*, p. 220.

Order XII., Rule 13. The same as the former practice: R. G. H. T. 1853, r. 2.

Order XII., Rule 14. This is also as before, except that it did not seem absolutely necessary for the undertaking to be in writing: R. G. H. T. 1853, r. 3.

Order XII., Rule 15. This rule would seem to apply to those cases in which the action is proceeding in default of appearance. See Order XIII., Rules 6 and 9, *post*, p. 213. It is almost identical in terms with sec. 20 of 15 & 16 Vict. c. 76.

Order XII., Rule 16. Persons having an interest in the deceased's estate were always allowed to intervene in the Court of Probate Rules, 1862, C. B. r. 6. See Browne's Practice of the Court of Probate, 250, 251.

Order XII., Rule 17. This was always permitted in the Court of Admiralty. See Williams and Bruce's Admiralty Practice, 199-201.

Order XII., Rule 21. This rule and the three preceding ones, allowing and regulating the appearance in ejectment of persons not named in the writ, seem quite in conformity with the previous practice: 15 & 16 Vict. c. 76, ss. 172-174, and R. G. H. T. 1853, r. 113.

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## ORDER XIII.

### DEFAULT OF APPEARANCE.

1. Where no appearance has been entered to a writ of summons for a defendant who is an infant or a person of unsound mind not so found by inquisition, the plaintiff may apply to the Court or a judge for an order that some proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order shall be made unless it appears on the hearing



Default of  
Appearance

of such application that the writ of summons was duly served, and that notice of such application was after the expiration of the time allowed for appearance, and at least six clear days before the day in such notice named for hearing the application, served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of serving such writ for summons, and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) served upon or left at the dwelling-house of the father or guardian, if any, of such infant, unless the Court or judge at the time of hearing such application shall dispense with such last-mentioned service.

2. Where any defendant fails to appear to a writ of summons, and the plaintiff is desirous of proceeding upon default of appearance under any of the following rules of this Order, or under Order XV., Rule 1, he shall, before taking such proceeding upon default, file an affidavit of service, or of notice in lieu of service, as the case may be.

3. In case of non-appearance by the defendant where the writ of summons is specially indorsed, under Order III., Rule 6, the plaintiff may sign final judgment for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified, if any, to the date of the judgment, and a sum for costs, but it shall be lawful for the Court or a judge to set aside or vary such judgment upon such terms as may seem just.

4. Where there are several defendants to a writ specially indorsed for a debt or liquidated demand in money, under Order III., Rule 6, and one or more of them appear to the writ, and another or others of them do not appear, the plaintiff may enter final judgment against such as have not appeared, and may issue execution upon such judgment without prejudice to his right to proceed with his action against such as have appeared.

5. Where the defendant fails to appear to the writ of summons and the writ is not specially indorsed, but the plaintiff's claim is for a debt or liquidated demand only,



no statement of claim need be delivered, but the plaintiff may file an affidavit of service or notice in lieu of service, as the case may be, and a statement of the particulars of his claim in respect of the causes of action stated in the indorsement upon the writ, and may, after the expiration of eight days, enter final judgment for the amount shewn thereby and costs to be taxed, provided that the amount shall not be more than the sum indorsed upon the writ besides costs.

Default of  
Appear-  
ance.

6. Where the defendant fails to appear to the writ of summons and the plaintiff's claim is not for a debt or liquidated demand only, but for detention of goods and pecuniary damages, or either of them, no statement of claim need be delivered, but interlocutory judgment may be entered and a writ of inquiry shall issue to assess the value of the goods and the damages, or the damages only, as the case may be, in respect of the causes of action disclosed by the indorsement on the writ of summons. But the Court or a judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way in which any question arising in an action may be tried.

7. In case no appearance shall be entered in an action for the recovery of land, within the time limited for appearance, or if an appearance be entered but the defence be limited to part only, the plaintiff shall be at liberty to enter a judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply.

8. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, or damages for breach of contract, upon a writ for the recovery of land, he may enter judgment as in the last preceding rule mentioned for the land; and may proceed as in the other preceding rules of this order as to such other claim so indorsed.

9. In actions assigned by the 34th section of the Act to the Chancery Division, and in Probate actions, and in all other actions not by the rules in this order otherwise specially provided for, in case the party served with the



Default of  
Appear-  
ance.

writ does not appear within the time limited for appearance, upon the filing by the plaintiff of a proper affidavit of service the action may proceed as if such party had appeared.

10. In an Admiralty action in rem, in which an appearance has not been entered, the plaintiff may proceed as follows:—

- (a.) He may, after the expiration of twelve days from the filing of the writ of summons, take out a notice of sale, to be advertised by him in two or more public journals to be from time to time appointed by the judge.
- (b.) After the expiration of six days from the advertisement of the notice of sale in the said journals, if an appearance has not been entered, the plaintiff shall file in the registry an affidavit to the effect that the said notices have been duly advertised, with copies of the journals annexed, as also such proofs as may be necessary to establish the claim, and a notice of motion to have the property sold.
- (c.) If, when the motion comes before the judge, he is satisfied that the claim is well founded, he may order the property to be appraised and sold, and the proceeds to be paid into the registry.
- (d.) If there be two or more actions by default pending against the same property, it shall not be necessary to take out a notice of sale in more than one of the actions; but if the plaintiff in the first action does not, within eighteen days from filing of the writ in that action, take out and advertise the notice of sale, the plaintiff in the second or any subsequent action may take out and advertise the notice of sale, if he shall have filed in the registry a writ of summons in rem in such second or subsequent action.
- (e.) Within six days from the time when the proceeds have been paid into the registry, the plaintiff in each action shall, if he has not previously done



so, file his proofs in the registry and have the action placed on the list for hearing.

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Appear-  
ance.

- (f.) In an action of possession, after the expiration of six days from the filing of the writ, if an appearance has not been entered, the plaintiff may, on filing in the registry a memorandum, take out a notice of proceeding in the action, to be advertised by him in two or more public journals to be from time to time appointed by the judge.
- (g.) After the expiration of six days from the advertisement of the notice of proceeding in the said journals, if an appearance has not been entered, the plaintiff shall file in the registry an affidavit to the effect that the notice has been duly advertised with copies of the journals annexed, as also such proofs as may be necessary to establish the action, and shall have the action placed on the list for hearing.
- (h.) If when the action comes before the judge he is satisfied that the claim is well founded, he may pronounce for the same, and decree possession of the vessel accordingly.

Order XIII., Rule 1. It was always necessary to appoint a guardian to enter appearance for an infant before signing judgment against him by default. See Day's Com. Law Procedure, 63; 2 Chit. Prac. (12th ed.) 1244. It could not, however, be done for a lunatic, against whom proceedings might be taken and judgment signed in the ordinary manner.

Order XIII., Rule 2. This is very much the same as the former practice. See 2 Chit. Prac. 981.

Order XIII., Rule 3. This is also similar to the former practice. See 15 & 16 Vict. c. 76, s. 27.

Order XIII., Rule 4. This is an important variation of, and improvement on, the former practice. A plaintiff could not issue execution against the parties who had not appeared without abandoning his remedy against those who had appeared. If he wished to reserve his remedy against them, he was compelled to suspend his execution against the defaulters till the action was finished against the other parties. The judgment originally signed became merely interlocutory, and the plaintiff lost the benefit of it if he did not succeed in the action: 15 & 16 Vict.



Default of  
Appear-  
ance.

c. 76, s. 33 ; 2 Chit. Prac. 982. As to judgment for want of a plea in such a case, see Order XXIX., Rule 3, *post*, p. 248.

Order XIII., Rule 5. This is again an improvement on the former practice. In such a case the plaintiff had to file a declaration : 15 & 16 Vict. c. 76, s. 28.

Order XIII., Rule 6. With the exception of the last proviso, this rule is in accordance with the former practice : 2 Chit. Prac. 985, *et seq.*

Order XIII., Rule 7. This rule is little more than a re-enactment of the 177th section of 15 & 16 Vict. c. 76.

Order XIII., Rule 8. This is a new proceeding.

Order XIII., Rule 10. This rule is similar to the former proceedings in the Court of Admiralty Rules and Orders, 1859, r. 19-26.

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## ORDER XIV.

### LEAVE TO DEFEND WHERE WRIT SPECIALLY INDORSED.

1. Where the defendant appears on a writ of summons specially indorsed, under Order III., Rule 6, the plaintiff may, on affidavit verifying the cause of action, and swearing that in his belief there is no defence to the action, call on the defendant to shew cause before the Court or a judge why the plaintiff should not be at liberty to sign final judgment for the amount so indorsed, together with interest, if any, and costs ; and the Court or judge may, unless the defendant, by affidavit or otherwise, satisfy the Court or judge that he has a good defence to the action on the merits, or disclose such facts as the Court or judge may think sufficient to entitle him to be permitted to defend the action, make an order empowering the plaintiff to sign judgment accordingly.

2. The application by the plaintiff for leave to enter final judgment under the last preceding rule shall be made by summons returnable not less than two clear days after service.

3. The defendant may shew cause against such application by offering to bring into Court the sum indorsed on the writ, or by affidavit. In such affidavit he shall state whether the defence he alleges goes to the whole or to part only, and if so, to what part of the plaintiff's claim.



And the judge may, if he think fit, order the defendant to attend and be examined upon oath; or to produce any books or documents or copies of or extracts therefrom.

Leave to  
defend  
where writ  
specially  
indorsed.

4. If it appear that the defence set up by the defendant applies only to a part of the plaintiff's claim; or that any part of his claim is admitted to be due; the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to or as is admitted to be due, subject to such terms, if any, as to suspending execution, or the payment of the amount levied or any part thereof into Court by the sheriff, the taxation of costs, or otherwise, as the judge may think fit. And the defendant may be allowed to defend as to the residue of the plaintiff's claim.

5. If it appears to the judge that any defendant has a good defence to or ought to be permitted to defend the action, and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to enter final judgment against the latter, and may issue execution upon such judgment without prejudice to his right to proceed with his action against the former.

6. Leave to defend may be given unconditionally or subject to such terms as to giving security, or otherwise, as the Court or a judge may think fit.

Order XIV. This Order introduces a most important and somewhat questionable change into our whole judicial procedure; and if not treated by the judges with very great caution may have a very prejudicial effect. The result of it seems to be that in cases where the defendant is not rich enough to bring the whole amount in dispute into Court under Rule 3, he may (in any case where the plaintiff's demand is for a liquidated sum) be deprived of his right to trial by jury, or to have the case disposed of by *vivâ voce* evidence, and will be liable to have it tried before a judge at Chambers, or a master (see Order LIV., *post*), by affidavit merely. It will thus be in the power of any judge or master in effect to decide a disputed cause in the plaintiff's favour on affidavits only, without giving the defendant any opportunity of bringing evidence to support his statement. See Order XXII., Rule 3, *post*, p. 239, as to the time within which the defendant must plead, if he obtains leave to do so; and Order XXXV., Rule 11, *post*, p. 262, as to his right of removing the cause from a district registry.



## ORDER XV.

### APPLICATION FOR ACCOUNT WHERE WRIT INDORSED UNDER ORDER III., RULE 8.

1. In default of appearance to a summons indorsed under Order III., Rule 8, and after appearance unless the defendant, by affidavit or otherwise, satisfy the Court or a judge that there is some preliminary question to be tried, an order for the account claimed, with all directions now usual in the Court of Chancery in similar cases, shall be forthwith made.

2. An application for such order as mentioned in the last preceding rule shall be made by summons, and be supported by an affidavit filed on behalf of the plaintiff, stating concisely the grounds of his claim to an account. The application may be made at any time after the time for entering an appearance has expired.

Order XV. This Order seems a most proper one.

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## ORDER XVI.

### PARTIES.

1. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person or persons who shall not be found entitled to relief, unless the Court in disposing of the costs of the action shall otherwise direct.

2. Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right



plaintiff or plaintiffs, the Court or a judge may, if satisfied Parties.  
that it has been so commenced through a bonâ fide mis- Order XVI.  
take, and that it is necessary for the determination of the  
real matter in dispute so to do, order any other person or  
persons to be substituted or added as plaintiff or plaintiffs  
upon such terms as may seem just.

3. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

4. It shall not be necessary that every defendant to any action shall be interested as to all the relief thereby prayed for, or as to every cause of action included therein; but the Court or a judge may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in such action in which he may have no interest.

5. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes.

6. Where in any action, whether founded upon contract or otherwise, the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, to the intent that in such action the question as to which, if any, of the defendants, is liable, and to what extent, may be determined as between all parties to the action.

7. Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the parties beneficially interested in the trust or estate, and shall be considered as representing such parties in the action; but the Court or a judge may, at any stage of the proceedings, order any of such parties



Parties.  
Order XVI. to be made parties to the action, either in addition to or in lieu of the previously existing parties thereto.

8. Married women and infants may respectively sue as plaintiffs by their next friends, in the manner practised in the Court of Chancery before the passing of this Act; and infants may, in like manner, defend any action by their guardians appointed for that purpose. Married women may also, by the leave of the Court or a judge, sue or defend without their husbands and without a next friend, on giving such security (if any) for costs as the Court or a judge may require.

9. Where there are numerous parties having the same interest in one action, one or more of such parties may sue or be sued, or may be authorized by the Court to defend in such action, on behalf or for the benefit of all parties so interested.

10. Any two or more persons claiming or being liable as co-partners may sue or be sued in the name of their respective firms, if any; and any party to an action may in such case apply by summons to a judge for a statement of the names of the persons who are co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the judge may direct.

11. Subject to the provisions of the Act, and these rules, the provisions as to parties, contained in section 42 of 15 & 16 Victoria, chapter 86, shall be in force as to actions in the High Court of Justice.

12. Subject as last aforesaid, in all probate actions the rules as to parties, heretofore in use in the Court of Probate, shall continue to be in force.

13. No action shall be defeated by reason of the misjoinder of parties, and the Court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court or a judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or a judge to be just, order that the name or names of any party or parties, whether as plaintiffs or as defendants, improperly



joined be struck out, and that the name or names of any party or parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the action, be added. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent thereto. All parties whose names are so added as defendants shall be served with a summons or notice in manner hereinafter mentioned, or in such manner as may be prescribed by any special order, and the proceedings as against them shall be deemed to have begun only on the service of such summons or notice. Parties.  
Order XVI.

14. Any application to add or strike out or substitute a plaintiff or defendant may be made to the Court or a judge at any time before trial by motion or summons, or at the trial of the action in a summary manner.

15. Where a defendant is added, unless otherwise ordered by the Court or judge, the plaintiff shall file an amended copy of and sue out a writ of summons, and serve such new defendant with such writ or notice in lieu of service thereof in the same manner as original defendants are served.

16. If a statement of claim has been delivered previously to such defendant being added, the same shall, unless otherwise ordered by the Court or a judge, be amended in such manner as the making of such new defendant a party shall render desirable, and a copy of such amended statement of claim shall be delivered to such new defendant at the time when he is served with the writ of summons or notice or afterwards, within four days after his appearance.

17. Where a defendant is or claims to be entitled to contribution or indemnity, or any other remedy or relief over against any other person, or where from any other cause it appears to the Court or a judge that a question in the action should be determined not only as between



Parties. the plaintiff and defendant, but as between the plaintiff,  
Order XVI. defendant, and any other person, or between any or either  
of them, the Court or a judge may on notice being given  
to such last-mentioned person, make such order as may  
be proper for having the question so determined.

18. Where a defendant claims to be entitled to contribution, indemnity, or other remedy or relief over against any person not a party to the action, he may, by leave of the Court or a judge, issue a notice to that effect, stamped with the seal with which writs of summons are sealed. A copy of such notice shall be filed with the proper officer and served on such person according to the rules relating to the service of writs of summons. The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the Court or a judge, be served within the time limited for delivering his statement of defence. Such notice may be in the form or to the effect of the Form No. 1 in Appendix (B) hereto, with such variations as circumstances may require, and therewith shall be served a copy of the statement of claim, or if there be no statement of claim, then a copy of the writ of summons in the action.

19. When under Rule 17 of this Order it is made to appear to the Court or a judge at any time before or at the trial that a question in the action should be determined, not only as between the plaintiff and defendant, but as between the plaintiff and the defendant and any other person, or between any or either of them, the Court or a judge, before or at the time of making the order for having such question determined, shall direct such notice to be given by the plaintiff at such time and to such person and in such manner as may be thought proper, and if made at the trial the judge may postpone such trial as he may think fit.

20. If a person not a party to the action, who is served as mentioned in Rule 18, desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, he must enter an appearance in the action within eight days from the service of the notice. In default of his so doing, he shall be deemed



to admit the validity of the judgment obtained against such defendant, whether obtained by consent or otherwise. Parties.  
Order XVI. Provided always, that a person so served and failing to appear within the said period of eight days may apply to the Court or a judge for leave to appear, and such leave may be given upon such terms, if any, as the Court or a judge shall think fit.

21. If a person not a party to the action served under these Rules appears pursuant to the notice, the party giving the notice may apply to the Court or a judge for directions as to the mode of having the question in the action determined; and the Court or judge, upon the hearing of such application, may, if it shall appear desirable so to do, give the person so served liberty to defend the action upon such terms as shall seem just, and may direct such pleadings to be delivered, or such amendments in any pleadings to be made, and generally may direct such proceedings to be taken, and give such directions as to the Court or a judge shall appear proper for having the question most conveniently determined, and as to the mode and extent in or to which the person so served shall be bound or made liable by the decision of the question.

Order XVI., Rule 3. This rule and the two preceding ones are most useful, especially in those cases where it is doubtful in whose name an action ought to be brought, or against whom it lies. The safe course now will be to join all, subject of course to the liability of paying any costs caused by the misjoinder of plaintiffs, or paying to the defendant wrongly joined his costs, as the case may be. It was formerly held that no power of amendment could be exercised under 15 & 16 Vict. c. 96, s. 37, where a defendant had been joined for the purpose of testing his liability: *Wickens v. Steel*, 2 C. B. (N.S.) 488; see Rules 6 and 13, *ante*, pp. 219, 220.

Order XVI., Rule 5. This and Rule 4 will be found to save expense in many instances.

Order XVI., Rule 6. See Rule 3, *ante*, p. 219, and observations thereon, *supra*; and Rule 13, *ante*, p. 220, with observations thereon, *post*, p. 224.

Order XVI., Rule 9. This rule will save an immense amount of litigation, and apply in many instances where under the former practice actions could not be consolidated, while by Order LI., Rule 4, *post*, all actions may be consolidated in the same manner as formerly. As to the cases in which actions may be consolidated, see *Chit. Prac.* (12th ed.), 1357, *et seq.*



Parties.  
Order XVI.

Order XVI., Rule 10. This is a most useful rule, and will in many instances save an immense amount of trouble, while any possible inconvenience which could result from it will be found obviated by Order VII., Rule 2, *ante*, p. 201, and Order XII., Rule 12, *ante*, p. 209, which provide for the other side being furnished with full particulars as to who are the members of the firm suing or being sued. Order IX., Rule 6, *ante*, p. 204, provides for the manner of serving writs on a firm, and Order XLII., Rule 8, *post*, for the mode in which execution can be levied both on the property of the firm and on that of any of its individual members.

Order XVI., Rule 11. This rule preserves intact the cases in which a plaintiff in the Court of Chancery was relieved from bringing into the suit certain persons as defendants.

Order XVI., Rule 13. This rule is really a supplement to Rules 1, 2, 3, and 6 in this order, *ante*, pp. 218, 219, and is intended to obviate the inconvenience of a plaintiff who has a good cause of action being defeated because he is in doubt whom he ought to sue, or whether the action ought to be brought in his own name or in that of some one else.

As was also remarked, *ante*, p. 112, now that by sec. 25, subsec. 6, of the Judicature Act, 1873, assignees of choses in action can sue in their own name, this rule does away with the anomaly of a person who had no interest in the matter in dispute being made nominal plaintiff without his consent, and being responsible to the defendant for costs; while the real plaintiff was compelled to give him security for costs before using his name.

Order XVI., Rule 16. This rule and the preceding one are simply intended to prevent any injustice being caused by the operation of Rule 14, *ante*, p. 221.

Order XVI., Rule 21. The five preceding rules introduce a startling innovation, but at the same time a very great improvement on our judicial procedure. It continually happens that a defendant is sued in cases in which he has directly or indirectly a claim for indemnity or contribution against third parties; yet there was no mode of dispensing with his bringing a separate action against them, and when he had done so it was always more or less a matter of doubt whether the damages recovered against him were or were not any criterion by which to estimate the damages to which he was entitled. See *Baxendale v. London, Chatham, and Dover Railway*, L. R. 10 Ex. 35.

The defendant is now able to call on the person from whom he claims indemnity or contribution, to appear in the original action on the penalty of having the damages therein recovered conclusive against him. This will, it is evident, in many instances prevent an unnecessary action being brought.



## ORDER XVII.

## JOINDER OF CAUSES OF ACTION.

1. Subject to the following Rules, the plaintiff may unite in the same action and in the same statement of claim several causes of action, but if it appear to the Court or a judge that any such causes of action cannot be conveniently tried or disposed of together, the Court or judge may order separate trials of any of such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof.

2. No cause of action shall, unless by leave of the Court or a judge, be joined with an action for the recovery of land, except claims in respect of mesne profits or arrears of rent in respect of the premises claimed, or any part thereof, and damages for breach of any contract under which the same or any part thereof are held.

3. Claims by a trustee in bankruptcy as such shall not, unless by leave of the Court or a judge, be joined with any claim by him in any other capacity.

4. Claims by or against husband and wife may be joined with claims by or against either of them separately.

5. Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator.

6. Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant.

7. The last three preceding rules shall be subject to Rule 1 of this Order, and to the rules hereinafter contained.

8. Any defendant alleging that the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of in one action, may at any time apply to the Court or a judge for an order confining the



Joinder of  
causes of  
action.

action to such of the causes of action as may be conveniently disposed of in one proceeding.

9. If, on the hearing of such application as in the last preceding rule mentioned, it shall appear to the Court or a judge that the causes of action are such as cannot all be conveniently disposed of in one action, the Court or a judge may order any of such causes of action to be excluded, and may direct the statement of claim, or, if no statement of claim has been delivered, the copy of the writ of summons, and the indorsement of claim on the writ of summons, to be amended accordingly, and may make such order as to costs as may be just.

Order XVII., Rule 2. This rule, and the preceding ones, together with Rules 8 and 9, *supra*, are little more than a re-enactment of the 41st section of the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), except that by that section replevin could not be joined with any other cause of action. It is difficult to say why trespass and damages to land should not be included in an action for its recovery, as well as mesne profits.

Order XVII., Rule 3. It is evident that, in a general way, great confusion would arise if a trustee in bankruptcy were to be allowed to bring his own private affairs into consideration while prosecuting an action for the benefit of the bankrupt's creditors. Assuming a case to arise where two such claims could conveniently be tried together, a judge will by this rule be enabled to allow it to be done.

Order XVII., Rule 4. By this rule a plaintiff can proceed in the same action for a tort committed by the wife, and a debt due from her husband.

Order XVII., Rule 5. This rule is most useful, as it will enable an executor who carries on the business of the deceased till he is able to wind it up, to sue for a debt due to him on account of that business, together with a debt due to the deceased. It will be observed at the same time that all inconvenience is obviated, as the executor cannot join with these claims a private debt due to himself.

Order XVII., Rule 6. This will also in many cases save a multiplicity of suits, while the following rule will prevent any injustice being worked.



## ORDER XVIII.

ACTIONS BY AND AGAINST LUNATICS AND PERSONS OF  
UN SOUND MIND.

In all cases in which lunatics and persons of unsound mind not so found by inquisition might respectively before the passing of the Act have sued as plaintiffs, or would have been liable to be sued as defendants in any action or suit, they may respectively sue as plaintiffs in any action by their committee or next friend in manner practised in the Court of Chancery before the passing of the said Act, and may in like manner defend any action by their committees or guardians appointed for that purpose. Lunatics.

Order XVIII. This is an important improvement on the former practice. A lunatic at Common Law used to sue, and was liable to be sued in the same manner as any one else. See Chit. Prac. 1267. See, also, Order IX., Rule 5, *ante*, p. 203.

## ORDER XIX.

## PLEADING GENERALLY.

1. The following rules of pleading shall be substituted for those heretofore used in the High Court of Chancery and in the Courts of Common Law, Admiralty, and Probate. Pleading generally.

2. Unless the defendant in an action at the time of his appearance shall state that he does not require the delivery of a statement of complaint, the plaintiff shall within such time and in such manner as hereinafter prescribed, deliver to the defendant after his appearance a statement of his complaint and of the relief or remedy to which he claims to be entitled. The defendant shall within such time and in such manner as hereinafter prescribed deliver to the plaintiff a statement of his defence, set-off, or counter-claim (if any), and the plaintiff shall in like manner deliver a statement of his reply (if any) to



Pleading  
generally.  
Order XIX.

such defence, set-off, or counter-claim. Such statements shall be as brief as the nature of the case will admit, and the Court in adjusting the costs of the action shall inquire at the instance of any party into any unnecessary prolixity, and order the costs occasioned by such prolixity to be borne by the party chargeable with the same.

3. A defendant in an action may set off, or set up, by way of counter-claim against the claims of the plaintiff, any right or claim, whether such set-off or counter-claim sound in damages or not, and such set-off or counter-claim shall have the same effect as a statement of claim in a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the Court or a judge may, on the application of the plaintiff before trial, if in the opinion of the Court or judge such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof.

4. Every pleading shall contain as concisely as may be a statement of the material facts on which the party pleading relies, but not the evidence by which they are to be proved, such statement being divided into paragraphs, numbered consecutively, and each paragraph containing, as nearly as may be, a separate allegation. Dates, sums, and numbers shall be expressed in figures and not in words. Signature of counsel shall not be necessary. Forms similar to those in Appendix (C.) hereto may be used.

5. Every pleading which shall contain less than three folios of 72 words each (every figure being counted as one word) may be either printed or written, or partly printed and partly written, and every other pleading, not being a petition or summons, shall be printed.

6. Every pleading or other document required to be delivered to a party, or between parties, shall be delivered in the manner now in use to the solicitor of every party who appears by a solicitor, or to the party if he does not appear by a solicitor, but if no appearance has been



entered for any party, then such pleading or document shall be delivered by being filed with the proper officer. Pleading generally.  
Order XIX.

7. Every pleading in an action shall be delivered between parties, and shall be marked on the face with the date of the day on which it is delivered, and with the reference to the letter and number of the action, the division to which and the judge (if any) to whom the action is assigned, the title of the action, the description of the pleading, and the name and place of business of the solicitor and agent, if any, delivering the same, or the name and address of the party delivering the same if he does not act by a solicitor.

8. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and may also ask for general relief. And the same rule shall apply to any counter-claim made, or relief claimed by the defendant, in his statement of defence. If the plaintiff's claim be for discovery only the statement of claim shall show it.

9. Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly. And the same rule shall apply where the defendant relies upon several distinct grounds of defence, set-off, or counter-claim founded upon separate and distinct facts.

10. Where any defendant seeks to rely upon any facts as supporting a right of set-off or counter-claim, he shall, in his statement of defence, state specifically that he does so by way of set-off or counter-claim.

11. If either party wishes to deny the right of any other party to claim as executor, or as trustee whether in bankruptcy or otherwise, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically.

12. In Probate actions where the plaintiff disputes the interest of the defendant, he shall allege in his statement of claim that he denies the defendant's interest (a). Probate actions.

(a) See ante, p. 20.



Pleading  
generally.  
Order XIX.

13. No plea or defence shall be pleaded in abatement.

14. No new assignment shall hereafter be necessary or used. But everything which has heretofore been alleged by way of new assignment may hereafter be introduced by amendment of the statement of claim.

15. No defendant in an action for the recovery of land who is in possession by himself or his tenant need plead his title, unless his defence depends on an equitable estate or right or he claims relief upon any equitable ground against any right or title asserted by the plaintiff. But, except in the cases hereinbefore mentioned, it shall be sufficient to state by way of defence that he is so in possession. And he may nevertheless rely upon any ground of defence which he can prove, except as hereinbefore mentioned.

16. Nothing in these Rules contained shall affect the right of any defendant to plead not guilty by statute. And every defence of not guilty by statute shall have the same effect as a plea of not guilty by statute as heretofore had. But if the defendant so plead he shall not plead any other defence without the leave of the Court or a judge.

17. Every allegation of fact in any pleading in an action, not being a petition or summons, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not so found by inquisition.

18. Each party in any pleading, not being a petition or summons, must allege all such facts not appearing in the previous pleadings as he means to rely on, and must raise all such grounds of defence or reply, as the case may be, as if not raised on the pleadings would be likely to take the opposite party by surprise, or would raise new issues of fact not arising out of the pleadings, as for instance, fraud, or that any claim has been barred by the Statute of Limitations or has been released.

19. No pleading, not being a petition or summons, shall, except by way of amendment, raise any new ground of claim, or contain any allegation of fact inconsistent



with the previous pleadings of the party pleading the same. Pleading generally.  
Order XIX.

20. It shall not be sufficient for a defendant in his defence to deny generally the facts alleged by the statement of claim, or for a plaintiff in his reply to deny generally the facts alleged in a defence by way of counter-claim, but each party must deal specifically with each allegation of fact of which he does not admit the truth.

21. Subject to the last preceding rule, the plaintiff by his reply may join issue upon the defence, and each party in his pleading, if any, subsequent to reply, may join issue upon the previous pleading. Such joinder of issue shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined, but it may except any facts which the party may be willing to admit, and shall then operate as a denial of the facts not so admitted.

22. When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance. Thus, if it be alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And so when a matter of fact is alleged with divers circumstances, it shall not be sufficient to deny it as alleged along with those circumstances, but a fair and substantial answer must be given.

23. When a contract is alleged in any pleading, a bare denial of the contract by the opposite party shall be construed only as a denial of the making of the contract in fact, and not of its legality or its sufficiency in law, whether with reference to the Statute of Frauds or otherwise.

24. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof unless the precise words of the document or any part thereof are material.



Pleading  
generally  
Order XIX.

25. Wherever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

26. Wherever it is material to allege notice to any person of any fact, matter, or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice be material.

27. Wherever any contract or any relation between any persons does not arise from an express agreement, but is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

28. Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied.

[E.g.—Consideration for a bill of exchange where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim.]

29. Where an action proceeds in a district registry all pleadings and other documents required to be filed shall be filed in the district registry.

Collision  
between  
vessels.

30. In actions for damage by collision between vessels, unless the Court or a judge shall otherwise order, each solicitor shall, before any pleading is delivered, file with the proper officer a document to be called a Preliminary Act, which shall be sealed up and shall not be opened until ordered by the Court or a judge, and which shall contain a statement of the following particulars:—

(a.) The names of the vessels which came into collision and the names of their masters.



- (b.) The time of the collision.
- (c.) The place of the collision.
- (d.) The direction of the wind.
- (e.) The state of the weather.
- (f.) The state and force of the tide.
- (g.) The course and speed of the vessel when the other was first seen.
- (h.) The lights, if any, carried by her.
- (i.) The distance and bearing of the other vessel when first seen.
- (k.) The lights, if any, of the other vessel which were first seen.
- (l.) Whether any lights of the other vessel, other than those first seen, came into view before the collision.
- (m.) What measures were taken, and when, to avoid the collision.
- (n.) The parts of each vessel which first came into contact.

Pleading  
generally.  
Order XIX.

If both solicitors consent, the Court or a judge may order the preliminary acts to be opened and the evidence to be taken thereon without its being necessary to deliver any pleadings.

Order XIX., Rule 1. This rule is the most sweeping in the whole statute, as at one stroke it does away with the existing system of pleading in every division of the High Court of Justice except the Divorce and Matrimonial Division.

Order XIX., Rule 2. This rule is framed with a view to avoid unnecessary expense. It often happens that the defendant is perfectly aware of what the plaintiff's claim actually is, especially after he has seen the indorsement on the writ, and can derive no additional information from the declaration, or statement of claim, as it is now called. The unnecessary cost of framing such statement may therefore be avoided; and the defendant, it will be seen, can deliver his statement of defence without it. See Order XXII., rule 2, *post*, p. 239.

Order XIX., Rule 3. This is a striking change. It was a cardinal rule of pleading that the statutes of set-off applied only to mutual debts, and that there could be no set-off when the claim of either plaintiff or defendant was for unliquidated damages. See Bullen on Pleading (3rd ed.), 679. Till there have been



Pleading  
generally  
Order XIX.

various decisions to settle the new law, it is impossible to decide in what cases the Courts will or will not allow a counter-claim sounding in damages to be set up. It is, however, probable that while most money claims would be allowed, and breaches of contract, whether the damages claimed were liquidated or unliquidated, that the Court would never allow the defendant in an action on a bill of exchange to set up, by way of counter-claim, that the plaintiff had seduced his daughter or assaulted his wife.

Order XIX., Rule 4. It is extremely difficult to reconcile this rule with the forms given in Appendix C., *post*. In many of these forms it will be observed that evidence is pleaded to a most extraordinary extent. See, particularly, Form No. 20, *post*, where, in an action for knocking the plaintiff down by negligent driving, the statement of claim goes into minute details as to the trade of both plaintiff and defendant, the time of day at which the accident took place, the direction in which the plaintiff was walking, and actually the number of horses by which the defendant's van was drawn, almost leaving the reader to wonder why, amidst such particular and unnecessary description, their colour was not also mentioned.

Order XIX., Rule 5. This is a complete change as far as the Common Law Divisions are concerned. The pleadings in the Court of Chancery have been printed for several years. As to when amendments in any pleading are to be printed also, see Order XXVII., rule 8, *post*, p. 245. See Order V. of additional Rules, *post*, chap. vii.

Order XIX., Rule 6. This is not unlike the former practice. See 15 & 16 Vict. c. 76, s. 30, and R. G. H. T. 1853, rr. 162, 166.

Order XIX., Rule 8. This is an extension of the former practice. At common law the plaintiff could claim nothing but damages, except in those cases where by 17 & 18 Vict. c. 125. s. 79, he might also claim an injunction against the repetition or continuance of the injury of which he complained.

Order XIX., Rule 13. This rule will prevent a fruitful source of delay and expense, while almost all that was ever really useful in a plea of abatement may now be gained by an application under Order XVI., Rule 13, *ante*, p. 220. It is, however, a pity that no provision is made for cases in which another action is pending.

Order XIX., Rule 14. It is difficult to see the object of this change, or what possible advantage can be gained by amendment instead of new assignment.

Order XIX., Rule 15. This seems dangerous. Why should a defendant in possession be called upon under any circumstances to disclose his title?

Order XIX., Rule 16. This is the only case in which it is necessary for the defendant to obtain leave for any pleas, all the old rules



of pleading being abolished by Rule 1, *ante*, p. 227 ; it follows, Pleading as a matter of course, that there is no longer any objection to generally. pleading several matters without leave. Order XIX.

Order XIX., Rule 17. This rule will be found difficult to understand, or put in force with respect to some of the forms of pleading now introduced. See the observations under Rule 4, *ante*, p. 234, on Form No. 20 in Appendix C, *post*. If the defendant does not deny all the irrelevant allegations there introduced, is he to be taken to admit the trades of himself and defendant, the time when the accident took place, the number of horses in his van, &c.? This difficulty might be got over by the insertion of one word, *i.e.*, by beginning the rule thus: "Every *material* allegation," &c.

Order XIX., Rule 20. The observations under Rule 17 apply to this rule also.

Order XIX., Rule 22. As before mentioned in chap. iii. (a), the effect of this rule is practically to do away with the general issue, except where "Not Guilty by Statute" can be pleaded, as to which see Rule 16, *ante*, p. 230.

Order XIX., Rule 23. The effect of this rule will often be to prevent the plaintiff from being taken by surprise at the trial. In the additional forms given in the sixth Chapter there will be found some instances of pleadings in accordance with this provision. See Forms, *post*, chap. vi.

Order XIX., Rule 26. This rule and the two preceding ones are merely a re-enactment of the former practices, and are evidently intended to prevent unnecessary prolixity.

Order XIX., Rule 27. The necessity to refer to such letters or conversations is entirely new, and, like many other of the present rules, this one is framed on the principle of giving the other side as much information as possible, and preventing his being taken by surprise by the evidence adduced in support of the case he has to meet.

Order XIX., Rule 28. This rule merely re-enacts the former practice.

Order XIX., Rule 29. See Order XXXV., *post*, p. 260, as to proceedings in district registries.

Order XIX., Rule 30. This was formerly the case when actions for collision were brought in the Court of Admiralty by Rule 62 of Rules and Orders, 1859. See Cooke's Admiralty Practice (2nd ed.), 57. It is now so, in whatever division of the High Court they may be tried. See *ante*, pp. 19, 80, 115 ; *post*, p. 237.

(a) *Ante*, p. 87.



## ORDER XX.

## PLEADING MATTERS ARISING PENDING THE ACTION.

Pleading  
matters  
arising  
pending  
action.

1. Any ground of defence which has arisen after action brought, but before the defendant has delivered his statement of defence, and before the time limited for his doing so has expired, may be pleaded by the defendant in his statement of defence, either alone or together with other grounds of defence. And if, after a statement of defence has been delivered, any ground of defence arises to any set-off or counter-claim alleged therein by the defendant, it may be pleaded by the plaintiff in his reply, either alone or together with any other ground of reply.

2. Where any ground of defence arises after the defendant has delivered a statement of defence, or after the time limited for his doing so has expired, the defendant may, and where any ground of defence to any set-off or counter-claim arises after reply, or after the time limited for delivering a reply has expired, the plaintiff may, within eight days after such ground of defence has arisen, and by leave of the Court or a judge, deliver a further defence or further reply, as the case may be, setting forth the same.

3. Whenever any defendant, in his statement of defence, or in any further statement of defence as in the last rule mentioned, alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence, which confession may be in the Form No. 2 in Appendix (B.) hereto, with such variations as circumstances may require, and he may thereupon sign judgment for his costs up to the time of the pleading of such defence unless the Court or a judge shall, either before or after the delivery of such confession, otherwise order.

Order XX. The rules in this Order carry out the principle of saving litigation by enabling every matter in dispute between the parties to be determined in one action, and are a very great extension of the power of pleading "*puis darrein continuance*." As to when matters could be pleaded which arose after the commencement of the suit, see 15 & 16 Vict. c. 76, s. 68, and Bullen on Pleading, 451.



## ORDER XXI.

## STATEMENT OF CLAIM.

1. Subject to Rules 2 and 3 of this Order, the delivery of statements of claim shall be regulated as follows:— Statement of claim.

(a.) If the defendant shall not state that he does not require the delivery of a statement of claim, the plaintiff shall, unless otherwise ordered by the Court or a judge, deliver it within six weeks from the time of the defendant's entering his appearance.

(b.) The plaintiff may, if he think fit, at any time after the issue of the writ of summons, deliver a statement of claim, with the writ of summons or notice in lieu of writ of summons, or at any time afterwards, either before or after appearance, and although the defendant may have appeared and stated that he does not require the delivery of a statement of claim: Provided that in no case where a defendant has appeared shall a statement be delivered more than six weeks after the appearance has been entered unless otherwise ordered by the Court or a judge.

(c.) Where a plaintiff delivers a statement of claim without being required to do so, the Court or a judge may make such order as to the costs occasioned thereby as shall seem just, if it appears that the delivery of a statement of claim was unnecessary or improper.

2. In Probate actions the plaintiff shall, unless otherwise ordered by the Court or a judge, deliver his statement of claim within six weeks from the entry of appearance by the defendant, or from the time limited for his appearance, in case he has made default; but where the defendant has appeared the plaintiff shall not be compelled to deliver it until the expiration of eight days after the defendant has filed his affidavit as to scripts (a). Probate.

(a) See ante, pp. 20, 229.



Statement  
of claim.  
Order XXI.  
Admiralty.

3. In Admiralty actions in rem the plaintiff shall, within twelve days from the appearance of the defendant, deliver his statement of claim.

4. Where a writ is specially indorsed, and the defendant has not dispensed with a statement of claim, it shall be sufficient for the plaintiff to deliver as his statement of claim a notice to the effect that his claim is that which appears by the indorsement upon the writ, unless the Court or a judge shall order him to deliver a further statement. Such notice may be either written or printed, or partly written and partly printed, and may be in the Form No. 3 in Appendix (B.) hereto, and shall be marked on the face in the same manner as is required in the case of an ordinary statement of claim. And when the plaintiff is ordered to deliver such further statement, it shall be delivered within such time as by such order shall be directed, and if no time be so limited, then within the time prescribed by Rule 1 of this Order.

Order XXI., Rule 1. It will be noticed that formerly a plaintiff could practically keep an action impending over the defendant's head for an unlimited time, and nothing could be done to hurry him save giving a fourteen days' notice to declare after the expiration of a whole term after the time when appearance was entered. It will now be seen, by Order XXIX., Rule 1, *post*, that if he does not declare within six weeks, he runs the risk of having his action dismissed. He also was able at the last moment to discontinue, countermand notice of trial, withdraw the record, or be nonsuited at his own will, and then commence a fresh action. This, it will be found, he cannot do now without the leave of the Court. See Order XXIII., Order XXXVI., Rule 13, and Order XLI., Rule 6, *post*.

The provision about costs is to prevent a plaintiff swelling the expenses by delivering a statement of claim unnecessarily as to costs generally. See additional Rules of Court, dated 12th August, 1875, *post*, chap. vii.

Order XXI., Rule 3. For proceedings in these actions in default of appearance, see Order XIII, rule 10, *ante*, p. 214.

Order XXI., Rule 4. This rule, again, is intended to save needless expense. The further statement which may be ordered seems to be of the nature of an order for further and better particulars, and would probably be directed in cases where such an order would be made.



## ORDER XXII.

## DEFENCE.

1. Where a statement of claim is delivered to a defendant he shall deliver his defence within eight days from the delivery of the statement of claim, or from the time limited for appearance, whichever shall be last, unless such time is extended by the Court or a judge. Defence.

2. A defendant who has appeared in an action and stated that he does not require the delivery of a statement of claim, and to whom a statement of claim is not delivered, may deliver a defence at any time within eight days after his appearance, unless such time is extended by the Court or a judge.

3. Where leave has been given to a defendant to defend under Order XIV., Rule 1, he shall deliver his defence, if any, within such time as shall be limited by the order giving him leave to defend, or if no time is thereby limited, then within eight days after the order.

4. Where the Court or a judge shall be of opinion that any allegations of fact denied or not admitted by the defence ought to have been admitted, the Court may make such order as shall be just with respect to any extra costs occasioned by their having been denied or not admitted.

5. Where a defendant by his defence sets up any counter-claim which raises questions between himself and the plaintiff along with any other person or persons, he shall add to the title of his defence a further title similar to the title in a statement of complaint, setting forth the names of all the persons who, if such counter-claim were to be enforced by cross-action, would be defendants to such cross action, and shall deliver his defence to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff.

6. Where any such person as in the last preceding rule mentioned is not a party to the action, he shall be summoned to appear by being served with a copy of the defence, and such service shall be regulated by the same



Defence. rules as are hereinbefore contained with respect to the  
OrderXXII. service of a writ of summons, and every defence so served shall be indorsed in the Form No. 4 in Appendix (B) hereto, or to the like effect.

7. Any person not a defendant to the action, who is served with a defence and counter-claim as aforesaid, must appear thereto as if he had been served with a writ of summons to appear in an action.

8. Any person named in a defence as a part to a counter-claim thereby made may deliver a reply within the time within which he might deliver a defence if it were a statement of claim.

9. Where a defendant by his statement of defence sets up a counter-claim, if the plaintiff or any other person named in manner aforesaid as party to such counter-claim contends that the claim thereby raised ought not to be disposed of by way of counter-claim, but in an independent action, he may at any time before reply, apply to the Court or a judge for an order that such counter-claim may be excluded, and the Court or a judge may, on the hearing of such application, make such order as shall be just.

10. Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the Court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

11. In Probate actions the party opposing a will may, with his defence, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, and shall be subject to the same liabilities in respect of costs as he would have been under similar circumstances according to the practice of the Court of Probate.

Order XXII., Rule 1. Eight days after declaration was always the time in which the defendant had to pl.ad, but formerly a plaintiff could not declare till after appearance; now, by Order XXI.,



Rule 1, sub-sec. (b.), *ante*, p. 237, he may declare at the time of Defence. serving the writ, or any time afterwards, without waiting for <sup>Order</sup> appearance; this rule, however, gives the defendant the same <sup>XXII.</sup> time for pleading as if the declaration had been delivered on the day of appearance. Further time to plead may now be obtained as formerly.

Order XXII., Rule 2. See Order XIX., Rule 2, *ante*, pp. 227, 233.

Order XXII., Rule 4. This rule, again, is one of those framed to avoid unnecessary expense. See the last clause in Order XIX., and Rule 2, *ante*, pp. 227, 233.

Order XXII., Rule 9. Rules 5 to 8 enable a defendant to set off any claims he may have against the plaintiff jointly with other persons, while Rule 9 will prevent his doing so in cases where it may appear either inconvenient or unjust. As the persons against whom the original defendant claims may, of course, have a defence of their own, it will be observed they must be summoned, and have an opportunity of defending themselves in the same manner as if the action had originally been brought against them.

Order XXII., Rule 10. This rule is a most useful one in ordinary cases, and will constantly save the necessity of bringing a cross action. It is, however, difficult to see how it is to be worked when the defendant, under Rules 4–8, *ante*, makes a counter-claim against other persons jointly with the plaintiff. For instance, if the plaintiff sues for £100, and the defendant admits the claim, but makes a counter-claim of a sum of £150, which he alleges to be due from the plaintiff and X. Y. jointly to him, and the jury find that the plaintiff and X. Y. are indebted to the defendant in £150, how is the judgment to be entered in this case? The defendant is only entitled to be paid £50 in all, though X. Y. owes him £150. Probably some further rules will have to be made to settle the practice.

Order XXII., Rule 11. As to these costs, see Browne's Practice of the Court of Probate, pp. 326, *et seq.*

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## ORDER XXIII.

### DISCONTINUANCE.

The plaintiff may, at any time before receipt of the defendant's statement of defence, or after the receipt thereof before taking any other proceeding in the action (save any interlocutory application), by notice in writing, wholly discontinue his action or withdraw any part or



Discon-  
tinuance.

parts of his alleged cause of complaint, and thereupon he shall pay the defendant's costs of the action, or, if the action be not wholly discontinued, the defendant's costs occasioned by the matter so withdrawn. Such costs shall be taxed, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action. Save as in this rule otherwise provided, it shall not be competent for the plaintiff to withdraw the record or discontinue the action without leave of the Court or a judge, but the Court or a judge may, before, or at, or after the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise as may seem fit, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out. The Court or a judge may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counter-claim to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence, or any part thereof, without such leave.

Order XXIII. The effect of this rule is that a plaintiff will not be able *mero motu* to discontinue his action after reply, though there is no doubt he would always be allowed to do so on payment of costs, where it was reasonable another action should be brought. See observations under Order XXI., Rule 1, *ante*, p. 238; Order XXXVI., Rule 13, and Order XLI., Rule 6, *post*, pp. 266, 279. It remains to be seen how this will work in practice.

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## ORDER XXIV.

### REPLY AND SUBSEQUENT PLEADINGS.

1. A plaintiff shall deliver his reply, if any, within three weeks after the defence or the last of the defences shall have been delivered, unless the time shall be extended by the Court or a judge.

2. No pleading subsequent to reply other than a joinder of issue shall be pleaded without leave of the Court or a judge, and then upon such terms as the Court or judge shall think fit.



3. Subject to the last preceding rule, every pleading subsequent to reply shall be delivered within four days after the delivery of the previous pleading, unless the time shall be extended by the Court or a judge.

Order XXIV., Rule 3. The rules under this Order are also intended to avoid unnecessary prolixity, and to prevent a plaintiff bringing an action impending over a defendant for an indefinite period.

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### ORDER XXV.

#### CLOSE OF PLEADINGS.

As soon as either party has joined issue upon any pleading of the opposite party simply without adding any further or other pleading thereto, the pleadings as between such parties shall be deemed to be closed.

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### ORDER XXVI.

#### ISSUES.

Where in any action it appears to a judge that the statement of claim or defence or reply does not sufficiently define the issues of fact in dispute between the parties, he may direct the parties to prepare issues, and such issues shall, if the parties differ, be settled by the judge.

Order XXVI. This Order appears intended to obviate the inconvenience likely to arise under the new system, of parties making irrelevant statements not raising clearly any material issue.

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### ORDER XXVII.

#### AMENDMENT OF PLEADINGS.

1. The Court or a judge may, at any stage of the proceedings, allow either party to alter his statement of claim or defence or reply, or may order to be struck out or amended any matter in such statements respectively



Amend-  
ment of  
pleadings.

which may be scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action, and all such amendments shall be made as may be necessary for the purpose of determining the real questions or question in controversy between the parties.

2. The plaintiff may, without any leave, amend his statement of claim once at any time before the expiration of the time limited for reply and before replying, or, where no defence is delivered, at any time before the expiration of four weeks from the appearance of the defendant who shall have last appeared.

3. A defendant who has set up in his defence any set-off or counter-claim may, without any leave, amend such set-off or counter-claim at any time before the expiration of the time allowed him for pleading to the reply, and before pleading thereto, or in case there be no reply, then at any time before the expiration of twenty-eight days from the filing of his defence.

4. Where any party has amended his pleading under either of the last two preceding rules, the opposite party may, within eight days after the delivery to him of the amended pleading, apply to the Court, or a judge, to disallow the amendment, or any part thereof, and the Court or judge may, if satisfied that the justice of the case requires it, disallow the same, or allow it subject to such terms as to costs or otherwise as may seem just.

5. Where any party has amended his pleading under Rule 2 or 3 of this Order, the other party may apply to the Court or a judge for leave to plead or amend his former pleading within such time and upon such terms as may seem just.

6. In all cases not provided for by the preceding rules of this Order, application for leave to amend any pleading may be made by either party to the Court or a judge in chambers, or to the judge at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may seem just.

7. If a party who has obtained an order for leave to amend a pleading delivered by him does not amend the



same within the time limited for that purpose by the Order, or if no time is thereby limited, then within fourteen days from the date of the order, such order to amend shall, on the expiration of such limited time as aforesaid, or of such fourteen days, as the case may be, become ipso facto void, unless the time is extended by the Court or a judge.

8. A pleading may be amended by written alterations in the pleading which has been delivered, and by additions on paper to be interleaved therewith if necessary, unless the amendments require the insertion of more than 144 words in any one place, or are so numerous or of such a nature that the making them in writing would render the pleading difficult or inconvenient to read, in either of which cases the amendment must be made by delivering a print of the pleading as amended.

9. Whenever any pleading is amended, such pleading when amended shall be marked with the date of the order, if any, under which the same is so amended, and of the day on which such amendment is made, in manner following, viz.: "Amended            day of            ."

10. Whenever a pleading is amended, such amended pleading shall be delivered to the opposite party within the time allowed for amending the same.

Order XXVII., Rule 5. It remains to be seen what the effect of this power of amendment will be, and whether in the long run it will not cause more expense than it saves; but if parties are allowed to amend without leave, it is somewhat surprising that the opposite party should not be allowed to plead to the amended pleading, or alter his plea in conformity thereto, without leave.

Order XXVII., Rule 8. See Order XIX., Rule 5, *ante*, p. 228, and *post*, chap. vii., as to pleadings being printed.

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## ORDER XXVIII.

### DEMURRER.

1. Any party may demur to any pleading of the opposite party, or to any part of a pleading setting up a distinct



**Demurrers.** cause of action, ground of defence, set-off, counter-claim, reply, or, as the case may be, on the ground that the facts alleged therein do not shew any cause of action, or ground of defence to a claim or any part thereof, or set-off, or counter-claim, or reply, or as the case may be, to which effect can be given by the Court as against the party demurring.

2. A demurrer shall state specifically whether it is to the whole or to a part, and if so, to what part, of the pleading of the opposite party. It shall state some ground in law for the demurrer, but the party demurring shall not, on the argument of the demurrer, be limited to the ground so stated. A demurrer may be in the Form 28 in Appendix (C.) hereto. If there is no ground, or only a frivolous ground of demurrer stated, the Court or judge may set aside such demurrer, with costs.

3. A demurrer shall be delivered in the same manner and within the same time as any other pleading in the action.

4. A defendant desiring to demur to part of a statement of claim, and to put in a defence to the other part, shall combine such demurrer and defence in one pleading. And so in every case where a party entitled to put in a further pleading desires to demur to part of the last pleading of the opposite party, he shall combine such demurrer and other pleading.

5. If the party demurring desires to be at liberty to plead as well as demur to the matter demurred to, he may, before demurring, apply to the Court or a judge for an order giving him leave to do so; and the Court or judge, if satisfied that there is reasonable ground for the demurrer, may make an order accordingly, or may reserve leave to him to plead after the demurrer is overruled, or may make such other order and upon such terms as may be just.

6. When a demurrer either to the whole or part of a pleading is delivered, either party may enter the demurrer for argument immediately, and the party so entering such demurrer shall on the same day give notice



thereof to the other party. If the demurrer shall not be entered and notice thereof given within ten days after delivery, and if the party whose pleading is demurred to does not within such time serve an order for leave to amend, the demurrer shall be held sufficient for the same purposes and with the same result as to costs as if it had been allowed on argument. Demurrers.

7. While a demurrer to the whole or any part of a pleading is pending, such pleading shall not be amended, unless by order of the Court or a judge; and no such order shall be made except on payment of the costs of the demurrer.

8. Where a demurrer to the whole or part of any pleading is allowed upon argument, the party whose pleading is demurred to shall, unless the Court otherwise order, pay to the demurring party the costs of the demurrer.

9. If a demurrer to the whole of a statement of claim be allowed, the plaintiff, subject to the power of the Court to allow the statement of claim to be amended, shall pay to the demurring defendant the costs of the action, unless the Court shall otherwise order.

10. Where a demurrer to any pleading or part of a pleading is allowed in any case not falling within the last preceding rule, then (subject to the power of the Court to allow an amendment) the matter demurred to shall as between the parties to the demurrer be deemed to be struck out of the pleadings, and the rights of the parties shall be the same as if it had not been pleaded.

11. Where a demurrer is overruled the demurring party shall pay to the opposite party the costs occasioned by the demurrer, unless the Court shall otherwise direct.

12. Where a demurrer is overruled the Court may make such order and upon such terms as to the Court shall seem right for allowing the demurring party to raise by pleading any case he may be desirous to set up in opposition to the matter demurred to.

13. A demurrer shall be entered for argument by delivering to the proper officer a memorandum of entry in the Form No. 29 in Appendix (C.)



Order XXVIII, Rule 6. This rule makes the principal practical difference in the practice of demurring, as in effect it compels the party whose pleading is demurred to, to enter the demurrer for argument under pain of having it allowed.

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## ORDER XXIX.

### DEFAULT OF PLEADING.

1. If the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, the defendant may, at the expiration of that time, apply to the Court or a judge to dismiss the action with costs, for want of prosecution; and on the hearing of such application the Court or judge may, if no statement of claim have been delivered, order the action to be dismissed accordingly, or may make such other order on such terms as to the Court or judge shall seem just.

2. If the plaintiff's claim be only for a debt or liquidated demand, and the defendant does not, within the time allowed for that purpose, deliver a defence or demurrer, the plaintiff may, at the expiration of such time, enter final judgment for the amount claimed, with costs.

3. When in any such action as in the last preceding rule mentioned there are several defendants, if one of them make default as mentioned in the last preceding rule, the plaintiff may enter final judgment against the defendant so making default, and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants.

4. If the plaintiff's claim be for detention of goods and pecuniary damages, or either of them, and the defendant makes default as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant, and a writ of inquiry shall issue to assess the value of the goods, and the damages, or the damages only, as the case may be. But the Court or a judge may order that, instead of a writ of inquiry, the value and amount of



damages, or either of them, shall be ascertained in any way in which any question arising in an action may be tried. Default of pleading.

5. When in any such action as in Rule 4 mentioned there are several defendants, if one of them make default as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant so making default, and proceed with his action against the others. And in such case, damages against the defendant making default shall be assessed at the same time with the trial of the action or issues therein against the other defendants, unless the Court or a judge otherwise direct.

6. If the plaintiff's claim be for a debt or liquidated demand; and also for detention of goods and pecuniary damages, or pecuniary damages only, and the defendant makes default as mentioned in Rule 2, the plaintiff may enter final judgment for the debt or liquidated demand, and also enter interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed as mentioned in Rule 4.

7. In an action for the recovery of land, if the defendant makes default as mentioned in Rule 2, the plaintiff may enter a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land, with his costs.

8. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, or damages for breach of contract upon a writ for the recovery of land, if the defendant makes default as mentioned in Rule 2, or if there be more than one defendant, some or one of the defendants make such default, the plaintiff may enter judgment against the defaulting defendant or defendants and proceed as mentioned in Rules 4 and 5.

9. In Probate actions, if any defendant make default in filing and delivering a defence or demurrer, the action may proceed, notwithstanding such default.

10. In all other actions than those in the preceding rules of this Order mentioned, if the defendant makes default in delivering a defence or demurrer, the plaintiff may set down the action on motion for judgment, and



Default of  
pleading.

such judgment shall be given as upon the statement of claim the Court shall consider the plaintiff to be entitled to.

11. Where, in any such action as mentioned in the last preceding rule, there are several defendants, then, if one of such defendants make such default as aforesaid, the plaintiff may either set down the action at once on motion for judgment against the defendant so making default, or may set it down against him at the time when it is entered for trial or set down on motion for judgment against the other defendants.

12. If the plaintiff does not deliver a reply or demurrer, or any party does not deliver any subsequent pleading, or a demurrer, within the period allowed for that purpose, the pleadings shall be deemed to be closed at the expiration of that period, and the statements of fact in the pleading last delivered shall be deemed to be admitted.

13. In any case in which issues arise in an action other than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading, the opposite party may apply to the Court or a judge for such judgment, if any, as upon the pleadings he may appear to be entitled to. And the Court may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties.

14. Any judgment by default, whether under this Order or under any other of these Rules, may be set aside by the Court or a judge, upon such terms as to costs or otherwise as such Court or judge may think fit.

Order XXIX., Rule 1. As already observed with regard to Order XXI., Rule 1, *ante*, p. 237, a plaintiff is now bound to proceed with reasonable dispatch under pain of having his action dismissed.

Order XXIX., Rule 2. This is the same as the former practice. See 15 & 16 Vict. c. 76, ss. 53, 93.

Order XXIX., Rule 3. This is extending to judgment for want of a plea the provisions already made with regard to judgment for want of appearance by Order XIII., Rule 4, *ante*, p. 212.

Order XXIX., Rule 6. This rule and the two preceding ones are all



framed with a view of shortening legal proceedings and making them as inexpensive as possible. Default of pleading.

Order XXIX., Rule 7. This judgment may be enforced by a writ of possession. See Order XLVIII., *post*, p. 289.

Order XXIX., Rule 8. This is a great improvement on the previous practice; in such a case it was necessary to bring a fresh action to recover mesne profits or other damages. See Bullen on Pleading (3rd ed.), 421.

Order XXIX., Rule 9. See Order XIII., Rule 9, *ante*, p. 213, making a similar provision in case of non-appearance.

Order XXIX., Rule 10. See Order XL., *post*, p. 275, as to motions for judgment.

Order XXIX., Rule 14. This rule is evidently intended to obviate the injustice which might in many instances be caused by a strict adherence to Rules 12 and 13, *ante*, p. 250.

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## ORDER XXX.

### PAYMENT INTO COURT IN SATISFACTION.

1. Where any action is brought to recover a debt or damages, any defendant may at any time after service of the writ, and before or at the time of delivering his defence, or by leave of the Court or a judge at any later time, pay into Court a sum of money by way of satisfaction or amends. Payment into Court shall be pleaded in the defence, and the claim or cause of action in respect of which such payment shall be made shall be specified therein.

2. Such sum of money shall be paid to the proper officer, who shall give a receipt for the same. If such payment be made before delivering his defence, the defendant shall thereupon serve upon the plaintiff a notice that he has paid in such money, and in respect of what claim, in the Form No. 5 in Appendix (B.) hereto.

3. Money paid into Court as aforesaid may, unless otherwise ordered by a judge, be paid out to the plaintiff, or to his solicitor, on the written authority of the plaintiff. No affidavit shall be necessary to verify the plaintiff's signature to such written authority unless specially required by the officer of the Court.



Payment  
into Court.

4. The plaintiff, if payment into Court is made before delivering a defence, may within four days after receipt of notice of such payment, or if such payment is first stated in a defence delivered then may before reply, accept the same in satisfaction of the causes of action in respect of which it is paid in ; in which case he shall give notice to the defendant in the Form No. 6 in Appendix (B.) hereto, and shall be at liberty in case the sum paid in is accepted in satisfaction of the entire cause of action, to tax his costs, and, in case of non-payment within forty-eight hours, to sign judgment for his costs so taxed.

Order XXX., Rule 1. This rule is a most objectionable one, and the former practice was far preferable. A plaintiff has, by the 70th section of the Common Law Procedure Act, 1852, been able to pay money into Court in all actions, except a few (notably that of libel) in which the plaintiff's action is often more for the vindication of his character than for the recovery of damages. Now a defendant who has fearfully injured his neighbour by slandering him, or giving him into custody on a false charge, has only to pay enough into Court, and the plaintiff is unable to clear himself except by paying the costs of the action to the man who has injured him. There is, however, one part of the rule which introduces a great improvement on the former practice, *i.e.* (in actions where it is proper to allow payment into Court at all), allowing the payment to be made at any time, and thereby enabling a defendant who is willing to pay what he really owes, to avoid the expense of a declaration.

Order XXX., Rule 3. This leaves the practice as it was before. See R. G. H. T. 1853, r. 11.

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## ORDER XXXI.

### DISCOVERY AND INSPECTION.

1. The plaintiff may, at the time of delivering his statement of claim, or at any subsequent time not later than the close of the pleadings, and a defendant may, at the time of delivering his defence, or at any subsequent time not later than the close of the pleadings, without any order for that purpose, and either party may at any time, by leave of the Court or a judge, deliver interrogatories in



writing for the examination of the opposite party or parties, or any one or more of such parties, with a note at the foot thereof, stating which of such interrogatories each of such persons is required to answer; Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose. <sup>Interrogatories.</sup>

2. The Court in adjusting the costs of the action shall at the instance of any party inquire or cause inquiry to be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing master or of the Court or judge that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be borne by the party in fault.

3. Interrogatories may be in the Form No. 7 in Appendix (B.) hereto, with such variations as circumstances may require.

4. If any party to an action be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply at chambers for an order allowing him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly.

5. Any party called upon to answer interrogatories, whether by himself or by any member or officer, may, within four days after service of the interrogatories, apply at chambers to strike out any interrogatory, on the ground that it is scandalous or irrelevant, or is not put *bonâ fide* for the purposes of the action, or that the matter inquired after is not sufficiently material at that stage of the action, or on any other ground. And the judge, if satisfied that any interrogatory is objectionable, may order it to be struck out.

6. Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as a judge may allow.

7. An affidavit in answer to interrogatories shall, unless



Discovery  
and inspection.

otherwise ordered by a judge, if exceeding three folios, be printed and may be in the Form No. 8 in Appendix (B.) hereto, with such variations as circumstances may require.

8. Any objection to answering any interrogatory may be taken, and the ground thereof stated in the affidavit.

9. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court or a judge on motion or summons.

10. If any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court or a judge for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer, or answer further, either by affidavit or by *vivâ voce* examination, as the judge may direct.

11. It shall be lawful for the Court or a judge at any time during the pendency therein of any action or proceeding, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such action or proceeding, as the Court or judge shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

12. Any party may, without filing any affidavit, apply to a judge for an order directing any other party to the action to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question in the action.

13. The affidavit to be made by a party against whom such order as is mentioned in the last preceding Rule has been made, shall specify which, if any, of the documents therein mentioned, he objects to produce, and it may be in the Form No. 9 in Appendix (B.) hereto, with such variations as circumstances may require.

14. Every party to an action or other proceeding shall be entitled, at any time before or at the hearing thereof, by notice in writing, to give notice to any other



party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such action or proceeding, unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the action, or that he had some other sufficient cause for not complying with such notice. <sup>Interrogatories.</sup>

15. Notice to any party to produce any documents referred to in his pleading or affidavits shall be in the Form No. 10 in Appendix (B.) hereto.

16. The party to whom such notice is given shall, within two days from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in Rule 13, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within four days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice may be in the Form No. 11 in Appendix (B.) hereto, with such variations as circumstances may require.

17. If the party served with notice under Rule 15 omits to give such notice of a time for inspection, or objects to give inspection, the party desiring it may apply to a judge for an order for inspection.

18. Every application for an order for inspection of documents shall be to a judge. And except in the case of documents referred to in the pleadings or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to



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and inspection.

inspect them, and that they are in the possession or power of the other party.

19. If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court or a judge may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the action, or that for any other reason it is desirable that any issue or question in dispute in the action should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

20. If any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating may apply to the Court or a judge for an order to that effect, and an order may be made accordingly.

21. Service of an order for discovery or inspection made against any party on his solicitor shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the order.

22. A solicitor upon whom an order against any party for discovery or inspection is served under the last rule, who neglects without reasonable excuse to give notice thereof to his client, shall be liable to attachment.

23. Any party may, at the trial of an action or issue, use in evidence any or more of the answers of the opposite party to interrogatories without putting in the others: Provided always, that in such case the judge may look at the whole of the answers, and if he shall be of opinion that any other of them are so connected with



those put in that the last-mentioned answers ought not to be used without them, he may direct them to be put in. Discovery and inspection.

Order XXXI., Rule 2. The whole of this Order will be found extremely useful in practice, by enabling each party to obtain the information that is requisite without the formality of having in every case to go before a judge for permission to do so. This rule, together with the 5th and 9th, *ante*, p. 253—4, will be found sufficient to prevent any abuse of the privilege.

Order XXXI., Rule 4. This is an extension of the provision made by 17 & 18 Vict. c. 125, s. 51, allowing the officers of a body corporate to be interrogated. Reading this rule together with Rule 1 and Rule 5, *ante*, p. 253, it would seem that the Order would simply be that the required officer or officers might be interrogated, and would not specify what interrogatories might be put.

Order XXXI., Rule 10. This rule is very similar to the present practice. See 17 & 18 Vict. c. 125, s. 53.

Order XXXI., Rule 19. The preceding Rules (11—19) will be found extremely useful in adding to the power of parties of obtaining such discovery or inspection as may be necessary for them, while Rules 18 & 19 are expressly framed to guard against injustice. Rule 14 is also calculated to prevent surprise at the trial. As to the costs of proceedings under this rule, see chap. vii., *post*. For the former practice, see 2 Chit. Prac. (12th ed.) 1423—1449.

Order XXXI., Rule 20. This rule is a most useful one. The remedy by attachment always existed, but was often of little practical use to the injured party, and could seldom be enforced without great delay. Now the party in default will be punished by losing his cause, a remedy both speedy and efficacious; while the necessity of applying to the Court or a judge will prevent such a penalty being inflicted in case of omission through accident or carelessness.

Order XXXI., Rule 22. Rule 21 merely does common justice, by saving an innocent party from severe and undeserved punishment; while Rule 22 causes the penalty to be inflicted on the person really in default.

Order XXXI., Rule 23. It is difficult to see the object of this rule, and unless carefully watched it will lead to much injustice. It is certain to encourage, on the one hand, considerable trickiness in framing interrogatories, and, on the other, unnecessary prolixity in answering them, in order to prevent any one answer by itself being unfavourable to the party interrogated. The present practice of putting in the whole or none is much safer. See 15 & 16 Vict. c. 86, ss. 12, 14, 19.



## ORDER XXXII.

### ADMISSIONS.

**Admissions.** 1. Any party to an action may give notice, by his own statement or otherwise, that he admits the truth of the whole or any part of the case stated or referred to in the statement of claim, defence, or reply of any other party.

2. Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the action may be, unless at the hearing or trial the Court certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense.

3. A notice to admit documents may be in the Form No. 12 in Appendix (B.) hereto.

4. An affidavit of the solicitor or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents, and annexed to the affidavit, shall be sufficient evidence of such admissions.

**Order XXXII.** The whole of this Order is intended to save unnecessary expense at the trial, by parties being obliged to prove that which is not disputed. Rules 2 and 4 are simply re-enactments of 16 & 16 Vict. c. 76, ss. 117, 118, while the form referred to in Rule 3 is identical with that provided by R. G. H. T. 1853, r. 29. See Order XXII., Rule 4; Order XI., Rule 17; 21 & 22 Vict. c. 27, s. 7.

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## ORDER XXXIII.

### INQUIRIES AND ACCOUNTS.

The Court or a judge may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief



sought for or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

See Ch. C. Order XX.

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## ORDER XXXIV.

### QUESTIONS OF LAW.

1. The parties may, after the writ of summons has been issued, concur in stating the questions of law arising in the action in the form of a special case for the opinion of the Court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby. Upon the argument of such case the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial. Questions of law.

2. If it appear to the Court or a judge, either from the statement of claim or defence or reply or otherwise, that there is in any action a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a referee or an arbitrator, the Court or judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either by special case or in such other manner as the Court or judge may deem expedient, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

3. Every special case shall be printed by the plaintiff, and signed by the several parties or their solicitors, and shall be filed by the plaintiff. Printed copies for the use of the judges shall be delivered by the plaintiff.

4. No special case in an action to which a married woman, infant, or person of unsound mind is a party shall



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of law.

be set down for argument without leave of the Court or a judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant, or person of unsound mind, are true.

5. Either party may enter a special case for argument by delivering to the proper officer a memorandum of entry, in the Form No. 13 in Appendix (B.) hereto, and also if any married woman, infant, or person of unsound mind be a party to the action, producing a copy of the order giving leave to enter the same for argument.

Order XXXIV., Rule 1. This is another convenient mode of trying matters in dispute with as little trouble and expense as possible, and is very similar to the power of stating a special case given by the Common Law Procedure Act, 1852. See 15 & 16 Vict. c. 76, ss. 46, 47.

Order XXXIV., Rule 2. This is a great improvement on the previous practice of taking a verdict subject to a special case, and may often save both time and expense.

Order XXXIV., Rule 3. This rule, and an additional Rule of Court (Order IV.) dated 12th August, and published in the *London Gazette* of 24th August, 1875, is to apply to a special case under 13 & 14 Vict. c. 35, *post*, chap. vii.

Order XXXIV., Rule 4. This rule becomes necessary to prevent any injustice being worked by Rules 1 and 2, *supra*.

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## ORDER XXXV.

### PROCEEDINGS IN DISTRICT REGISTRIES.

1. Where an action proceeds in the district registry all proceedings, except where by these rules it is otherwise provided, or the Court or a judge shall otherwise order, shall be taken in the district registry, down to and including the entry for trial of the action or issues therein; or if the plaintiff is entitled to enter final judgment or to obtain an order for an account by reason of the default of the defendant, then down to and including such judgment or order; and such judgment or order as last aforesaid shall be entered in the district registry in the proper



book, in the same manner as a like judgment or order in an action proceeding in London would be entered in <sup>Proceed-</sup> <sup>ings in</sup> <sup>district</sup> <sup>registries.</sup> London. Where the writ of summons is issued out of a district registry and the plaintiff is entitled to enter interlocutory judgment under Order XIII., Rule 6, or where the action proceeds in the district registry and the plaintiff is entitled to enter interlocutory judgment under Order XXIX., Rule 4 or 5, in either case such interlocutory judgment, and, when damages shall have been assessed, final judgment, shall be entered in the district registry, unless the Court or a judge shall otherwise order.

Where an action proceeds in the district registry, final judgment shall be entered in the district registry unless the judge at the trial or the Court or a judge shall otherwise order.

2. Subject to the foregoing rules, where an action proceeds in the district registry the judgment and all such orders therein as require to be entered, except orders made by the district registrar under the authority and jurisdiction vested in him under these rules, shall be entered in London, and an office copy of every judgment and order so entered shall be transmitted to the district registry to be filed with the proceedings in the action.

3. Where an action proceeds in the district registry all writs of execution for enforcing any judgment or order therein shall issue from the district registry, unless the Court or a judge shall otherwise direct. Where final judgment is entered in the district registry costs shall be taxed in such registry unless the Court or a judge shall otherwise order.

4. Where an action proceeds in a district registry the district registrar may exercise all such authority and jurisdiction in respect of the action as may be exercised by a judge at chambers, except such as by these rules a Master of the Queen's Bench, Common Pleas, or Exchequer Divisions is precluded from exercising.

5. Every application to a district registrar shall be made in the same manner in which applications at chambers are directed to be made by these rules.



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6. If any matter appears to the district registrar proper for the decision of a judge, the registrar may refer the same to a judge, and the judge may either dispose of the matter or refer the same back to the registrar with such directions as he may think fit.

7. Any person affected by any order or decision of a district registrar may appeal to a judge. Such appeal may be made notwithstanding that the order or decision was in respect of a proceeding or matter as to which the district registrar had jurisdiction only by consent. Such appeal shall be by summons within four days after the decision complained of, or such further time as may be allowed by a judge or the registrar.

8. An appeal from a district registrar shall be no stay of proceedings unless so ordered by a judge or the registrar.

9. Every district registrar and other officer of a district registry shall be subject to the orders and directions of the Court or a judge as fully as any other officer of the Court, and every proceeding in a district registry shall be subject to the control of the Court or a judge, as fully as a like proceeding in London.

10. Every reference to a judge by or appeal to a judge from a district registrar in any action in the Chancery Division shall be to the judge to whom the action is assigned.

11. In any action which would, under the foregoing rules, proceed in the district registry, any defendant may remove the action from the district registry as of right in the cases, and within the times, following :

Where the writ is specially indorsed under Order III., Rule 6, and the plaintiff does not within four days after the appearance of such defendant give notice of an application for an order against him under Order XIV.; then such defendant may remove the action as of right at any time after the expiration of such four days, and before delivering a defence, and before the expiration of the time for doing so :

Where the writ is specially indorsed and the plaintiff



has made such application as in the last paragraph mentioned, and the defendant has obtained leave to defend in manner provided by Order XIV.; then such defendant may remove the action as of right at any time after the order giving him leave to defend, and before delivering a defence and before the expiration of the time for doing so: Proceed-  
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Where the writ is not specially indorsed any defendant may remove the action as of right at any time after appearance, and before delivering a defence and before the expiration of the time for doing so.

12. Any defendant desirous to remove an action as of right under the last preceding rule may do so by serving upon the other parties to the action, and delivering to the district registrar a notice, signed by himself or his solicitor, to the effect that he desires the action to be removed to London, and the action shall be removed accordingly: Provided, that if the Court or a judge shall be satisfied that the defendant giving such notice is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, such Court or judge may order that the action may proceed in the district registry notwithstanding such notice.

13. In any case not provided for by the last two preceding rules, any party to an action proceeding in a district registry may apply to the Court or a judge, or to the district registrar, for an order to remove the action from the district registry to London, and such Court, judge, or registrar, may make an order accordingly, if satisfied that there is sufficient reason for doing so, upon such terms, if any, as shall seem just.

Any party to an action proceeding in London may apply to the Court or a judge for an order to remove the action from London to any district registry, and such Court or judge may make an Order accordingly, if satisfied that there is sufficient reason for doing so, upon such terms, if any, as shall seem just.

14. Whenever any proceedings are removed from the district registry to London, the district registrar shall



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transmit to the proper officer of the High Court of Justice all original documents (if any) filed in the district registry, and a copy of all entries in the books of the district registry of the proceedings in the action.

Order XXXV., Rule 1. By sec. 60 of the Judicature Act, 1873, *ante*, p. 135, as amended by sec. 13 of this Act, *ante*, p. 168, Her Majesty in Council has power to appoint district registrars in various parts of the country, the proceedings of which are further regulated by secs. 61 and 62, and secs. 64–66 of the first-mentioned Act, *ante*, p. 136. This power has been exercised by Order in Council, August 12, 1875. See chap. vii., *post*. The object of this provision is to save expense, but whether it will really have this effect remains to be seen. Order V., Rules 1–3, *ante*, p. 196, provide for cases where writs may be issued out of these registries, and Order XII., Rules 1–5, *ante*, p. 208, direct when appearances may be entered in them.

By Order XIX., Rule 29, *ante*, p. 232, it is directed that when an action is proceeding in a district registry, all pleadings and other documents requiring to be filed shall be filed in that registry.

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## ORDER XXXVI.

### TRIAL.

Trial.

1. There shall be no local venue for the trial of any action, but when the plaintiff proposes to have the action tried elsewhere than in Middlesex, he shall in his statement of claim name the county or place in which he proposes that the action shall be tried, and the action shall, unless a judge otherwise orders, be tried in the county or place so named. Where no place of trial is named in the statement of claim, the place of trial shall, unless a judge otherwise orders, be the county of Middlesex. Any order of a judge, as to such place of trial, may be discharged or varied by a Divisional Court of the High Court.

2. Actions shall be tried and heard either before a judge or judges, or before a judge sitting with assessors, or before a judge and jury, or before an official or special referee, with or without assessors.

3. Subject to the provisions of the following rules,



the plaintiff may, with his reply, or at any time after the Trial. close of the pleadings, give notice of trial of the action, and thereby specify one of the modes mentioned in Rule 2; and the defendant may, upon giving notice within four days from the time of the service of the notice of trial, or within such extended time as a Court or judge may allow, to the effect that he desires to have the issues of fact tried before a judge and jury, be entitled to have the same so tried.

4. Subject to the provisions of the following rules, if the plaintiff does not within six weeks after the close of the pleadings, or within such extended time as a Court or judge may allow, give notice of trial, the defendant may, before notice of trial given by the plaintiff, give notice of trial, and thereby specify one of the modes mentioned in Rule 2; and in such case the plaintiff, on giving notice within the time fixed by Rule 3 that he desires to have the issues of fact tried before a judge and jury, be entitled to have the same so tried.

5. In any case in which neither the plaintiff nor defendant has given notice under the preceding rules that he desires to have the issues of fact tried before a judge and jury, or in any case within the 57th section of the Act, if the plaintiff or defendant desires to have the action tried in any other mode than that specified in the notice of trial, he shall apply to the Court or a judge for an order to that effect, within four days from the time of the service of the notice of trial, or within such extended time as a Court or judge may allow.

6. Subject to the provisions of the preceding rules, the Court or a judge may, in any action at any time or from time to time, order that different questions of fact arising therein be tried by different modes of trial, or that one or more questions of fact be tried before the others, and may appoint the place or places for such trial or trials, and in all cases may order that one or more issues of fact be tried before any other or others.

7. Every trial of any question or issue of fact by a jury shall be held before a single judge, unless such trial



Trial.

be specially ordered to be held before two or more judges.

8. Notice of trial shall state whether it is for the trial of the action or of issues therein; and in actions in the Queen's Bench, Common Pleas, and Exchequer Divisions, the place and day for which it is entered for trial. It may be in the Form No. 14 in Appendix (B.), with such variations as circumstances may require.

9. Ten days' notice of trial shall be given, unless the party to whom it is given has consented to take short notice of trial; and shall be sufficient in all cases, unless otherwise ordered by the Court or a judge. Short notice of trial shall be four days' notice.

10. Notice of trial shall be given before entering the action for trial.

11. Notice of trial for London or Middlesex shall not be or operate as for any particular sittings; but shall be deemed to be for any day after the expiration of the notice on which the action may come on for trial in its order upon the list.

12. Notice of trial elsewhere than in London or Middlesex shall be deemed to be for the first day of the then next assizes at the place for which short notice of trial is given.

13. No notice of trial shall be countermanded, except by consent, or by leave of the Court or a judge, which leave may be given subject to such terms as to costs, or otherwise, as may be just.

14. If the party giving notice of trial for London or Middlesex omits to enter the action for trial on the day or day after giving notice of trial, the party to whom notice has been given may, unless the notice has been countermanded under the last rule, within four days enter the action for trial.

15. If notice of trial is given for elsewhere than in London or Middlesex, either party may enter the action for trial. If both parties enter the action for trial, it shall be tried in the order of the plaintiff's entry.

16. The list or lists of actions for trial at the sittings in



London and Middlesex respectively shall be prepared and <sup>Trial.</sup> the actions shall be allotted for trial without reference to the division of the High Court to which such actions may be attached.

17. The party entering the action for trial shall deliver to the officer a copy of the whole of the pleadings in the action, for the use of the judge at the trial. Such copy shall be in print, except as to such parts, if any, of the pleadings as are by these rules permitted to be written.

18. If, when an action is called on for trial, the plaintiff appears, and the defendant does not appear, then the plaintiff may prove his claim, so far as the burden of proof lies upon him.

19. If, when an action is called on for trial, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counter-claim, shall be entitled to judgment dismissing the action; but if he has a counter-claim, then he may prove such claim so far as the burden of proof lies upon him.

20. Any verdict or judgment obtained where one party does not appear at the trial, may be set aside by the Court or a judge upon such terms as may seem fit, upon an application made within six days after the trial; such application may be made either at the assizes or in Middlesex.

21. The judge may, if he think it expedient for the interests of justice, postpone or adjourn the trial for such time, and upon such terms, if any, as he shall think fit.

22. Upon the trial of an action, the judge may, at or after such trial, direct that judgment be entered for any or either party, as he is by law entitled to upon the findings, and either with or without leave to any party to move to set aside or vary the same, or to enter any other judgment, upon such terms, if any, as he shall think fit to impose; or he may direct judgment not to be entered then, and leave any party to move for judgment. No judgment shall be entered after a trial without the order of a Court or judge.



Trial.

23. Upon every trial at the assizes, or at the London and Middlesex sitting of the Queen's Bench, Common Pleas, or Exchequer Division, where the officer present at the trial is not the officer by whom judgments ought to be entered, the associate shall enter all such findings of fact as the judge may direct to be entered, and the directions, if any, of the judge as to judgment, and the certificates, if any, granted by the judge, in a book to be kept for the purpose.

24. If the judge shall direct that any judgment be entered for any party absolutely, the certificate of the associate to that effect shall be a sufficient authority to the proper officer to enter judgment accordingly. The certificate may be in the Form No. 15 in Appendix (B.) hereto.

25. If the judge shall direct that any judgment be entered for any party subject to leave to move, judgment shall be entered accordingly upon the production of the associate's certificate.

26. The Court or a judge may, if it shall appear desirable, direct a trial without a jury of any question or issue of fact, or partly of fact and partly of law, arising in any cause or matter which previously to the passing of the Act could, without any consent of parties, be tried without a jury.

27. The Court or a judge may, if it shall appear either before or at the trial that any issue of fact can be more conveniently tried before a jury, direct that such issue shall be tried by a judge with a jury.

28. Trials with assessors shall take place in such manner and upon such terms as the Court or a judge shall direct.

29. In any cause the Court or a judge of the division to which the cause is assigned may, at any time or from time to time, order the trial and determination of any question or issue of fact, or partly of fact and partly of law, by any commissioner or commissioners appointed in pursuance of the 29th section of the said Act, or at the sittings to be held in Middlesex or London, and such



question or issue shall be tried and determined accord- Trial.  
ingly.

30. Where any cause or matter, or any question in any cause or matter, is referred to a referee, he may, subject to the order of the Court or a judge, hold the trial at or adjourn it to any place which he may deem most convenient, and have any inspection or view, either by himself or with his assessors (if any), which he may deem expedient for the better disposal of the controversy before him. He shall, unless otherwise directed by the Court or a judge, proceed with the trial *de die in diem*, in a similar manner as in actions tried by a jury.

31. Subject to any order to be made by the Court or judge ordering the same, evidence shall be taken at any trial before a referee, and the attendance of witnesses may be enforced by subpoena, and every such trial shall be conducted in the same manner, as nearly as circumstances will admit, as trials before a judge of the High Court, but not so as to make the tribunal of the referee a public Court of justice.

32. Subject to any such order as last aforesaid, the referee shall have the same authority in the conduct of any reference or trial as a judge of the High Court when presiding at any trial before him.

33. Nothing in these rules contained shall authorize any referee to commit any person to prison or to enforce any order by attachment or otherwise.

34. The referee may, before the conclusion of any trial before him, or by his report under the reference made to him, submit any question arising therein for the decision of the Court, or state any facts specially, with power to the Court to draw inferences therefrom, and in any such case the order to be made on such submission or statement shall be entered as the Court may direct; and the Court shall have power to require any explanation or reasons from the referee, and to remit the cause or matter, or any part thereof, for re-trial or further consideration to the same or any other referee.

Order XXXVI., Rule 1. The abolition of local venues will, in



## Trial

many instances, save both trouble and expense. For instance, at present, in the case of ejectment or trespass to land at Greenwich, which is within a quarter of an hour's distance from London, the action must be tried at Maidstone, and all the parties and witnesses taken down there, actually having, as the quickest way, to go through London on their road.

Order XXXVI., Rule 2. This rule, authorized by sec. 56 of the Judicature Act, 1873, *ante*, p. 133, introduces two more modes of trial, viz., before a judge with assessors, and before referees. With regard to referees, see Rules 30–34, *ante*, p. 269. The object of trying before a judge with assessors, is to give the judge the benefit of the unbiassed opinion of skilled witnesses, instead of having them called on behalf of each party. How far this object will be obtained seems problematical. By Rule 28, *ante*, p. 268, these trials are to take place as directed.

Order XXXVI., Rule 4. This rule and the preceding one are framed to prevent either party being deprived of the old constitutional right to have issues of fact tried before a jury.

Order XXXVI., Rule 5. Sec. 57 (*ante*, p. 134), referred to here, is applicable to cases (not being criminal proceedings by the Crown) which cannot conveniently be tried before a jury or in the ordinary manner.

Order XXXVI., Rule 6. This provision is entirely new, and it is difficult to say how far it will be found feasible in practice.

Order XXXVI., Rule 9. This is the same as before: 15 & 16 Vict. c. 96, s. 97, and R. G. H. T. 1853, r. 35.

Order XXXVI., Rule 13. This rule is in accordance with others in which, as previously observed, the plaintiff is deprived of the power he formerly had over his own proceedings. Time only can show how it will work. See Order XXIII.; Order XXIX., Rule 1, *ante*, pp. 241, 248; and Order XLI., Rule 6, *post*, 279.

Order XXXVI., Rule 20. This rule is meant to obviate the injustice which would otherwise be caused by Rule 19, *ante*, p. 267, in conjunction with Order XLI., Rule 6, *post*, p. 279, by which a plaintiff would for ever lose his cause of action if accidentally absent from Court at the time of trial.

Order XXXVI., Rule 22. See Order XL., *post*, p. 275. It will be noticed that now judgment is not to be signed as a matter of course by the successful party.

Order XXXVI., Rule 26. See 17 & 18 Vict. c. 125, ss. 3–9, for cases where a compulsory reference may be ordered.

Order XXXVI., Rule 34. Trials before referees, a species of professional arbitrators, are new; they are regulated by secs. 57–59 and 83 of the Judicature Act, 1873, *ante*, pp. 134, 148, and may be ordered by a judge under Rule 2 of this Order, *ante*, p. 264.



## ORDER XXXVII.

## EVIDENCE GENERALLY.

1. In the absence of any agreement between the parties, Evidence and subject to these rules, the witnesses at the trial of generally- any action or at any assessment of damages, shall be examined *vivâ voce* and in open court, but the Court or a judge may at any time for a sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the Court or judge may think reasonable, or that any witness whose attendance in court ought for some sufficient cause to be dispensed with, be examined by interrogatories or otherwise before a commissioner or examiner; provided that where it appears to the Court or judge that the other party *bonâ fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

2. Upon any motion, petition, or summons evidence may be given by affidavit; but the Court or a judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit.

3. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.

4. The Court or a judge may, in cause or matter where it shall appear necessary for the purposes of justice, make any order for the examination upon oath before any officer of the Court, or any other person or persons, and at any



*Evidence  
generally.*

place, of any witness or person, and may order any deposition so taken to be filed in the Court, and may empower any party to any such cause or matter to give such deposition in evidence therein on such terms, if any, as the Court or a judge may direct.

Order XXXVII., Rule 1. As has been already observed in chap. iii., *ante*, p. 88, with the exception of allowing particular facts to be proved by affidavit, this rule will make little, if any, difference in trials in the Common Law Divisions of the High Court, but will make a most important alteration in the Chancery, Probate, and Admiralty Divisions, by introducing *visâ voce* evidence much more frequently than it is now used. It is a great pity that this opportunity was not taken of doing away with the special examiners in Chancery.

Order XXXVII., Rule 4. This rule and the two preceding ones are intended to guard against the evils inseparable from taking evidence by affidavit, while preserving the conveniences which in many instances may be obtained by so doing. See *Morgan v. Alexander*, L. R. 10 C. P. 184. See 1 Will. 4, c. 22.

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## ORDER XXXVIII.

### EVIDENCE BY AFFIDAVIT.

1. Within fourteen days after a consent for taking evidence by affidavit as between the plaintiff and the defendant has been given, or within such time as the parties may agree upon, or a judge in chambers may allow, the plaintiff shall file his affidavits and deliver to the defendant or his solicitor a list thereof.

2. The defendant within fourteen days after delivery of such list, or within such time as the parties may agree upon, or a judge in chambers may allow, shall file his affidavits and deliver to the plaintiff or his solicitor a list thereof.

3. Within seven days after the expiration of the said fourteen days, or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which affidavits shall be confined to matters strictly in reply, and shall deliver to the defendant or his solicitor a list thereof.



4. When the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party, may serve upon the party by whom such affidavit has been filed, a notice in writing, requiring the production of the deponent for cross-examination before the Court at the trial, such notice to be served at any time before the expiration of fourteen days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the Court or a judge may specially appoint; and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the special leave of the Court. The party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production.

Evidence  
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5. The party to whom such notice as is mentioned in the last preceding rule is given, shall be entitled to compel the attendance of the deponent for cross-examination in the same way as he might compel the attendance of a witness to be examined.

6. When the evidence in any action is under this order taken by affidavit, such evidence shall be printed, and the notice of trial shall be given at the same time or times after the close of the evidence as in other cases is by these rules provided after the close of the pleadings.

See additional Orders in Council I., II., III., V., dated the 12th of August, and inserted in the *London Gazette* of the 24th of August, 1875; *post*, chap. vii.

Order XXXVIII. It remains to be seen whether the rules under this order will be much used—that is to say, whether the parties will often consent to have evidence taken by affidavit. It does not seem likely this will be done often, except in cases where the facts are admitted, and the difference between the parties a legal one. Nothing is said about the mode of trial, therefore the rules under Order XXXVI., *ante*, p. 264, would apply; and there is nothing to prevent an action, in which the evidence is taken by affidavit, being tried by a jury; but in practice this would rarely occur.

The consent under Rule 1 should be in writing (Ch. C. Order III., Rule 2). Under Rule 4, the opposite party should have forty-eight hours' notice (Ch. C. Order XIX., Rule 9).



**ORDER XXXIX.****MOTION FOR NEW TRIAL.**

1. A party desirous of obtaining a new trial of any cause tried in the Queen's Bench, Common Pleas, or Exchequer Divisions on which a verdict has been found by a jury, or by a judge without a jury, must apply for the same to a Divisional Court by motion for an order calling upon the opposite party to shew cause at the expiration of eight days from the date of the order, or so soon after as the case can be heard, why a new trial should not be directed. Such motion shall be made within four days after the trial, if the Divisional Court is then sitting, or within the first four days after the commencement of the sitting of the Divisional Court next after the trial, or within such extended time as the Court or a judge may allow.

2. A copy of such order shall be served on the opposite party within four days from the time of the same being made.

3. A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, unless in the opinion of the Court to which the application is made some substantial wrong or miscarriage has been thereby occasioned in the trial of the action: and if it appear to such Court that such wrong or miscarriage affects part only of the matter in controversy, the Court may give final judgment as to part thereof, and direct a new trial as to the other part only.

4. A new trial may be ordered on any question in an action, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question.

5. An order to shew cause shall be a stay of proceedings in the action, unless the Court shall order that it shall not be so as to the whole or any part of the action.

Order XXXIX., Rule 3. This is the only rule of any importance under this order, and if carefully administered will be extremely



useful. It is notorious now that needless expense is often occasioned by a new trial being imperatively necessary on account of some slight misdirection of the judge, or the improper reception or rejection of some small piece of evidence on some point that could not possibly affect the result of the trial.

At the same time a very dangerous power is now put into the hands of the Court, as it must often be impossible to say whether a particular piece of evidence *had* or *had not* an effect on the minds of the jury, for that is the real question, not whether it *ought* to have an effect. For instance, in an action for seduction the jury would probably give heavier damages on hearing that the defendant was a rich man. See *Hodsoll v. Taylor*, L. R. 9 Q. B. 79. See C. L. P. Act, 1854, sec. 1; R. G. H. T., Rule 50.

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## ORDER XL.

### MOTION FOR JUDGMENT.

1. Except where by the Act or by these Rules it is provided that judgment may be obtained in any other manner, the judgment of the Court shall be obtained by motion for judgment.

2. Where at the trial of an action the judge or a referee has ordered that any judgment be entered subject to leave to move, the party to whom leave has been reserved shall set down the action on motion for judgment, and give notice thereof to the other parties within the time limited by the judge in reserving leave, or if no time has been limited, within ten days after the trial. The notice of motion shall state the grounds of the motion, and the relief sought, and that the motion is pursuant to leave reserved.

3. Where at the trial of an action the judge or referee abstains from directing any judgment to be entered, the plaintiff may set down the action on motion for judgment. If he does not so set it down and give notice thereof to the other parties within ten days after the trial, any defendant may set down the action on motion for judgment, and give notice thereof to the other parties.

4. Where at the trial of an action before a jury the judge has directed that any judgment be entered, any



Motion for judgment.

party may, without any leave reserved, move to set aside such judgment, and enter any other judgment, on the ground that the judgment directed to be entered is wrong by reason of the judge having caused the finding to be entered wrongly, with reference to the finding of the jury upon the question or questions submitted to them.

5. Where at the trial of an action the judge or a referee has directed that any judgment be entered, any party may, without any leave reserved, move to set aside such judgment, and to enter any other judgment, on the ground that upon the finding as entered the judgment so directed is wrong.

6. On every motion made under either of the last two preceding rules, the order shall be an order to shew cause, and shall be returnable in eight days. The motion shall be made within four days after the trial if the Divisional Court is then sitting, or within the first four days after the commencement of the sitting of the Divisional Court next after the trial, or within such extended time as a Court or judge may allow.

7. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, the plaintiff may set down the action on motion for judgment as soon as such issues or questions have been determined. If he does not so set it down, and give notice thereof to the other parties within ten days after his right so to do has arisen, then after the expiration of such ten days any defendant may set down the action on motion for judgment, and give notice thereof to the other parties.

8. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the Court or a judge for leave to set down the action on motion for judgment, without waiting for such trial or determination. And the



Court or judge may, if satisfied of the expediency thereof, give such leave, upon such terms, if any, as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other questions of fact. Motion for judgment.

9. No action shall, except by leave of the Court or a judge, be set down on motion for judgment after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do.

10. Upon a motion for judgment, or for a new trial, the Court may, if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it shall be of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made as it may think fit.

11. Any party to an action may, at any stage thereof, apply to the Court or a judge for such order as he may, upon any admissions of fact in the pleadings, be entitled to, without waiting for the determination of any other question between the parties. The foregoing rules of this Order shall not apply to such applications, but any such application may be made by motion, so soon as the right of the party applying to the relief claimed has appeared from the pleadings. The Court or a judge may, on any such application, give such relief, subject to such terms, if any, as such Court or judge may think fit.

Order XL., Rule 1. This order and the rules under it are entirely new, and a great deviation from the old practice, where the successful party was entitled to sign judgment as a matter of course, though in certain instances a stay of execution was granted till some doubtful point of law was settled, or the Court had decided whether or not a new trial should be granted.

For instances where provisions respecting judgment have been made, see Order XXIX., Rules 2, 10, 11; and Order XXXVI., Rule 22, *ante*, pp. 248, 267; Order XXXIX., Rule 1, *ante*, p. 274.



For the form of entering judgment after a motion for judgment made under the rules in this order, see Appendix (D.), Form 7, *post*.

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## ORDER XLI.

### ENTRY OF JUDGMENT.

1. Every judgment shall be entered by the proper officer in the book to be kept for the purpose. The party entering the judgment shall deliver to the officer a copy of the whole of the pleadings in the action other than any petition or summons; such copy shall be in print, except such parts (if any) of the pleadings as are by these rules permitted to be written: Provided that no copy need be delivered of any pleading a copy of which has been delivered on entering any previous judgment in such action. The forms in Appendix (D.) hereto may be used, with such variations as circumstances may require.

2. Where any judgment is pronounced by the Court or a judge in Court, the entry of the judgment shall be dated as of the day on which such judgment is pronounced, and the judgment shall take effect from that date.

3. In all cases not within the last preceding rule, the entry of judgment shall be dated as of the day on which the requisite documents are left with the proper officer for the purpose of such entry, and the judgment shall take effect from that date.

4. Where under the Act or these Rules, or otherwise, it is provided that any judgment may be entered or signed upon the filing of any affidavit or production of any document, the officer shall examine the affidavit or document produced, and if the same be regular and contain all that is by law required, he shall enter judgment accordingly.

5. Where by the Act or these Rules, or otherwise, any judgment may be entered pursuant to any order or certificate, or return to any writ, the production of such order or certificate sealed with the seal of the Court, or of such



return, shall be a sufficient authority to the officer to enter judgment accordingly. Entry of judgment.

6. Any judgment of nonsuit, unless the Court or a judge otherwise directs, shall have the same effect as a judgment upon the merits for the defendant; but in any case of mistake, surprise, or accident, any judgment of nonsuit may be set aside on such terms, as to payment of costs and otherwise, as to the Court or a judge shall seem just.

Order XLI., Rule 5. See Order XXXVI., Rules 22, 24, *ante*, p. 267, for instances where such order may be given; and for the form of entering judgment in such cases, see Appendix (D.), Form 5.

Order XLI., Rule 6. See Order XXI., Rule 1, *ante*, p. 237; Order XXIII., *ante*, p. 241; Order XXIX., Rule 1, *ante*, p. 248; and Order XXXVI., Rule 13, *ante*, p. 270, with the observations thereunder. This order makes a startling innovation on our previous practice, and it is by no means clear that it is an improvement.

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## ORDER XLII.

### EXECUTION.

1. A judgment for the recovery by or payment to any person of money may be enforced by any of the modes by which a judgment or decree for the payment of money of any Court whose jurisdiction is transferred by the said Act might have been enforced at the time of the passing thereof. Execution.

2. A judgment for the payment of money into Court may be enforced by writ of sequestration, or in cases in which attachment is authorized by law, by attachment.

3. A judgment for the recovery or for the delivery of the possession of land may be enforced by writ of possession.

4. A judgment for the recovery of any property other than land or money may be enforced:

By writ for delivery of the property:



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By writ of attachment:

By writ of sequestration.

5. A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal.

6. In these Rules the term "writ of execution" shall include writs of fieri facias, capias, elegit, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto. And the term "issuing execution against any party" shall mean the issuing of any such process against his person or property as under the preceding rules of this Order shall be applicable to the case.

7. Where a judgment is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the Court or a judge for leave to issue execution against such party. And the Court or judge may, if satisfied that the right to relief has arisen according to the terms of the judgment, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried.

8. Where a judgment is against partners in the name of the firm, execution may issue in manner following:—

(a.) Against any property of the partners as such:

(b.) Against any person who has admitted on the pleadings that he is, or has been adjudged to be a partner:

(c.) Against any person who has been served, as a partner, with the writ of summons, and has failed to appear.

If the party who has obtained judgment claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court or a



judge for leave so to do ; and the Court or judge may give such leave if the liability be not disputed, or if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

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9. No writ of execution shall be issued without the production to the officer by whom the same should be issued, of the judgment upon which the writ of execution is to issue, or an office copy thereof, shewing the date of entry. And the officer shall be satisfied that the proper time has elapsed to entitle the judgment creditor to execution.

10. No writ of execution shall be issued without the party issuing it, or his solicitor, filing a præcipe for that purpose. The præcipe shall contain the title of the action, the reference to the record, the date of the judgment, and of the order, if any, directing the execution to be issued, the names of the parties against whom, or of the firms against whose goods, the execution is to be issued ; and shall be signed by the solicitor of the party issuing it, or by the party issuing it, if he do so in person. The forms in Appendix (E.) hereto may be used, with such variations as circumstances may require.

11. Every writ of execution shall be indorsed with the name and place of abode or office of business of the solicitor actually suing out the same, and when the solicitor actually suing out the writ shall sue out the same as agent for another solicitor, the name and place of abode of such other solicitor shall also be indorsed upon the writ ; and in case no solicitor shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the city, town, or parish, and also the name of the hamlet, street, and number of the house of such plaintiff's or defendant's residence, if any such there be.

12. Every writ of execution shall bear date of the day on which it is issued. The forms in Appendix (F.) hereto



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may be used, with such variations as circumstances may require.

13. In every case of execution the party entitled to execution may levy the poundage, fees, and expenses of execution, over and above the sum recovered.

14. Every writ of execution for the recovery of money shall be indorsed with a direction to the sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of 4*l.* per cent. per annum from the time when the judgment was entered up, provided that in cases where there is an agreement between the parties that more than 4*l.* per cent. interest shall be secured by the judgment, then the indorsement may be accordingly to levy the amount of interest so agreed.

15. Every person to whom any sum of money or any costs shall be payable under a judgment, shall immediately after the time when the judgment was duly entered, be entitled to sue out one or more writ or writs of fieri facias or one or more writ or writs of elegit to enforce payment thereof, subject nevertheless as follows :

- (a.) If the judgment is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period.
- (b.) The Court or judge at the time of giving judgment, or the Court or a judge afterwards, may give leave to issue execution before, or may stay execution until any time after the expiration of the periods hereinbefore prescribed.

16. A writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner hereinafter provided ; but such writ may, at any time before its expiration, by leave of the Court or a judge, be renewed, by the party issuing it, for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked with a seal of the Court bearing the



date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his attorney, and bearing the like seal of the Court; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof.

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17. The production of a writ of execution, or of the notice renewing the same, purporting to be marked with such seal as in the last preceding rule mentioned, shewing the same to have been renewed, shall be sufficient evidence of its having been so renewed.

18. As between the original parties to a judgment, execution may issue at any time within six years from the recovery of the judgment.

19. Where six years have elapsed since the judgment, or any change has taken place by death or otherwise in the parties entitled or liable to execution, the party alleging himself to be entitled to execution may apply to the Court or a judge for leave to issue execution accordingly. And such Court or judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties, shall be tried in any of the ways in which any question in an action may be tried. And in either case such Court or judge may impose such terms as to costs or otherwise, as shall seem just.

20. Every order of the Court or a judge, whether in an action, cause, or matter, may be enforced in the same manner as a judgment to the same effect.

21. In cases other than those mentioned in Rule 18 any person not being a party in an action, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to the action; and any person not being a party in an action, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to the action.



Execution.  
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22. No proceeding by audita querela shall hereafter be used; but any party against whom judgment has been given may apply to the Court or a judge for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded; and the Court or judge may give such relief and upon such terms as may be just.

23. Nothing in any of the rules of this Order shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever.

24. Nothing in this Order shall affect the order in which writs of execution may be issued.

Order XLII., Rule 2. See note to Rule 4, *infra*.

Order XLII., Rule 3. For the mode of enforcing this writ, see Order XLVIII., Rule 1, *post*, p. 289; the form of writ, Appendix (F.), Form 7.

Order XLII., Rule 4. For the mode of enforcing a writ for the delivery of property, see Order XLIX., *post*, p. 289; the form of writ is in Appendix (F.), Form 8.

For writ of attachment, see Order XLIV., *post*, p. 285, and Appendix (F.), Form 9.

For writ of sequestration, see Order XLVII., *post*, p. 288, and Appendix (F.), Form 10.

Order XLII., Rule 6. With respect to the mode of enforcing the writs mentioned in this rule, see Order XLIII., *post*, p. 285.

Order XLII., Rule 8. We have already seen how partners may be sued in the name of their firm (Order IX., Rule 6, *ante*, p. 204, and Order XVI., Rule 10, *ante*, p. 220). This rule provides for the manner of issuing execution in such a case.

Order XLII., Rule 16. This rule only perpetuates the old practice, being a re-enactment in almost the same words of the 124th section of the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76).

Order XLII., Rule 19. Rule 18 merely continues the former practice, and this rule makes scarcely any alteration in it: 15 & 16 Vict. c. 76, ss. 128–134. See also 2 Chit. Prac. 593, 1122, *et seq.*

Order XLII., Rule 22. This process, which is now abolished, has long been practically obsolete, in consequence of the Court giving summary relief on motion, in cases where it would lie. See 1 Chit. Prac. 548.



## ORDER XLIII.

## WRITS OF FIERI FACIAS AND ELEGIT.

1. Writs of fieri facias and of elegit shall have the same force and effect as the like writs have heretofore had, and shall be executed in the same manner in which the like writs have heretofore been executed. Fieri facias  
and elegit.

2. Writs of venditioni exponas, distringas nuper vice comitem, fieri facias de bonis ecclesiasticis sequestrari facias de bonis ecclesiasticis, and all other writs in aid of a writ of fieri facias or of elegit, may be issued and executed in the same cases and in the same manner as heretofore.

Order XLIII., Rule 1. The form of a writ of *fieri facias* will be found Appendix (F.), Form 1, and *elegit*, Appendix (F.), Form 2.

Order XLIII., Rule 2. The form of *venditioni exponas* will be found Appendix (F.), Form 3; *fieri facias de bonis ecclesiasticis*, Appendix (F.), Forms 4 and 5; and *sequestrari facias de bonis ecclesiasticis*, Appendix (F.), Form 6.

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ORDER XLIV.

## ATTACHMENT.

1. A writ of attachment shall have the same effect as a writ of attachment issued out of the Court of Chancery has heretofore had. Attach-  
ment.

2. No writ of attachment shall be issued without the leave of the Court or a judge, to be applied for on notice to the party against whom the attachment is to be issued.

Order XLIV., Rule 1. The form of a writ of attachment will be found Appendix (F.), Form 9.



## ORDER XLV.

## ATTACHMENT OF DEBTS.

Attach-  
ment of  
debts.

1. Where a judgment is for the recovery by or payment to any person of money, the party entitled to enforce it may apply to the Court or a judge for an order that the judgment debtor be orally examined as to whether any and what debts are owing to him, before an officer of the Court, or such other person as the Court or judge shall appoint; and the Court or judge may make an order for the examination of such judgment debtor, and for the production of any books or documents.

2. The Court or a judge may, upon the ex parte application of such judgment creditor, either before or after such oral examination, and upon affidavit by himself or his solicitor stating that judgment has been recovered, and that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor, and is within the jurisdiction, order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor shall be attached to answer the judgment debt; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Court or a judge or an officer of the Court, as such Court or judge shall appoint, to shew cause why he should not pay the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt.

3. Service of an order that debts due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee, in such manner as the Court or judge shall direct, shall bind such debts in his hands.

4. If the garnishee does not forthwith pay into Court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear upon summons, then the Court or judge may order execution to issue, and it



may issue accordingly, without any previous writ or process, to levy the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the judgment debt. Attach-  
ment of  
debts.

5. If the garnishee disputes his liability, the Court or judge, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined.

6. Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Court or judge may order such third person to appear, and state the nature and particulars of his claim upon such debt.

7. After hearing the allegations of such third person under such order, and of any other person whom by the same or any subsequent order the Court or judge may order to appear, or in case of such third person not appearing when ordered, the Court or judge may order execution to issue to levy the amount due from such garnishee, or any issue or question to be tried or determined according to the preceding rules of this Order, and may bar the claim of such third person, or make such other order as such Court or judge shall think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the Court or judge shall think just and reasonable.

8. Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him as against the judgment debtor, to the amount paid or levied, although such proceeding may be set aside, or the judgment reversed.

9. There shall be kept by the proper officer a debt attachment book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates, and statements of the amount recovered, and



Attach-  
ment of  
debts.

otherwise; and copies of any entries made therein may be taken by any person upon application to the proper officer.

10. The costs of any application for an attachment of debts and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court or a judge.

Order XLV., Rule 7. With the exception of this rule and the preceding one, all the rules in this Order are simple re-enactments in nearly identical words of the directions respecting attachment of debts contained in the Common Law Procedure Act, 1854. See 17 & 18 Vict. c. 125, ss. 60–67. These two rules are framed in accordance with the spirit of many others in this Act, *i.e.*, for the purpose of doing complete justice between all parties having any claim on the matter in dispute, and thereby obviating the necessity of subsequent litigation.

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## ORDER XLVI.

### CHARGING OF STOCK OR SHARES AND DISTINGAS.

1. An order charging stock or shares may be made by any Divisional Court or by any judge, and the proceedings for obtaining such order shall be such as are directed, and the effect shall be such as is provided by 1 & 2 Vict. c. 110, ss. 14 and 15, and 3 & 4 Vict. c. 82, s. 1.

2. Any person claiming to be interested in any stock transferable at the Bank of England standing in the name of any other person may sue out a writ of *distringas* pursuant to the statute 5 Vict. c. 8,\* as heretofore. Such writ to be issued out of any office of the High Court in London, where writs of summons are issued. \*(Should be c. 5.)

*Miles v. Pressland*, 4 My. & C. 431; *Cragg v. Taylor*, L.R., 1 Ex. 148; *Watts v. Porter*, 3 E. & B. 741; *Watts v. Jeffries*, 20 L.J. Ch. 659.

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## ORDER XLVII.

### WRIT OF SEQUESTRATION.

Where any person is by any judgment directed to pay money into Court or to do any other act in a limited time,



and after due service of such judgment refuses or neglects to obey the same according to the exigency thereof, the person prosecuting such judgment shall, at the expiration of the time limited for the performance thereof, be entitled, without obtaining any order for that purpose, to issue a writ of sequestration against the estate and effects of such disobedient person. Such writ of sequestration shall have the same effect as a writ of sequestration in Chancery has heretofore had, and the proceeds of such sequestration may be dealt with in the same manner as the proceeds of writs of sequestration have heretofore been dealt with by the Court of Chancery.

Order XLVII. This writ will be found *post*, Appendix (F.), Form 10.  
See also Ch. C. Order XXIX., Rule 3.

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### ORDER XLVIII.

#### WRIT OF POSSESSION.

1. A judgment that a party do recover possession of any land may be enforced by writ of possession in manner heretofore used in actions of ejectment in the Superior Courts of Common Law.

2. Where by any judgment any person therein named is directed to deliver up possession of any lands to some other person, the person prosecuting such judgment shall, without any order for that purpose, be entitled to sue out a writ of possession on filing an affidavit shewing due service of such judgment and that the same has not been obeyed.

Order XLVIII., Rule 1. The circumstances under which this judgment can be entered by default will be found in Order XXIX., Rule 7, *ante*, p. 251; the form of the writ, Appendix (F.), Form 7, *post*; see also Chit. Arch. Prac., vol. ii., p. 1045.

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### ORDER XLIX.

#### WRIT OF DELIVERY.

A writ for delivery of any property other than land or money may be issued and enforced in the manner hereto-



Writ of  
delivery.

fore in use in actions of detinue in the Superior Courts of Common Law.

Order XLIX. For what purposes this writ is issued, see Order XLII., Rule 4, *ante*, p. 279; the form of writ is in Appendix (F.), Form 8. See also C. L. P. Act, 1854, s. 78; Mercantile L. A. Act, 1856, s. 2.

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## ORDER L.

### CHANGE OF PARTIES BY DEATH, ETC.

1. An action shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title pendente lite.

2. In case of the marriage, death, or bankruptcy, or devolution of estate by operation of law, of any party to an action, the Court or a judge may, if it be deemed necessary for the complete settlement of all the questions involved in the action, order that the husband, personal representative, trustee, or other successor in interest, if any, of such party be made a party to the action, or be served with notice thereof in such manner and form as hereinafter prescribed, and on such terms as the Court or judge shall think just, and shall make such order for the disposal of the action as may be just.

3. In case of an assignment, creation, or devolution of any estate or title pendente lite, the action may be continued by or against the person to or upon whom such estate or title has come or devolved.

4. Where by reason of marriage, death, or bankruptcy, or any other event occurring after the commencement of an action, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the action, it becomes necessary or desirable that any person not already a party to the action should be made a party thereto, or that any person already a party thereto should be made a party thereto in another capacity, an order that



the proceedings in the action shall be carried on between the continuing parties to the action, and such new party or parties, may be obtained *ex parte* on application to the Court or a judge, upon an allegation of such change, or transmission of interest or liability, or of such person interested having come into existence. Change of parties by death, &c.

5. An order so obtained shall, unless the Court or judge shall otherwise direct, be served upon the continuing party or parties to the action, or their solicitors, and also upon each such new party, unless the person making the application be himself the only new party, and the order shall from the time of such service, subject nevertheless to the next two following rules, be binding on the persons served therewith, and every person served therewith who is not already a party to the action shall be bound to enter an appearance thereto within the same time and in the same manner as if he had been served with a writ of summons.

6. Where any person who is under no disability or under no disability other than coverture, or being under any disability other than coverture, but having a guardian *ad litem* in the action, shall be served with such order, such person may apply to the Court or a judge to discharge or vary such order at any time within twelve days thereof.

7. Where any person being under any disability other than coverture, and not having had a guardian *ad litem* appointed in the action, is served with any such order, such person may apply to the Court or a judge to discharge or vary such order at any time within twelve days from the appointment of a guardian or guardians *ad litem* for such party, and until such period of twelve days shall have expired such order shall have no force or effect as against such last-mentioned person.

Order L. The provisions in this Order are an extension of those contained in secs. 135-142 of 15 & 16 Vict. c. 76, and enable other parties to be called in when they have become interested owing to the devolution of estate. As to the former practice, see 2 Chit. Prac. (12th ed.), 1569-1576.



## ORDER LI.

## TRANSFERS AND CONSOLIDATION.

1. Any action or actions may be transferred from one division to another of the High Court or from one judge to another of the Chancery Division by an order of the Lord Chancellor, provided that no transfer shall be made from or to any division without the consent of the president of the division.

2. Any action may, at any stage, be transferred from one division to another by an order made by the Court or any judge of the division to which the action is assigned: provided that no such transfer shall be made without the consent of the president of the division to which the action is proposed to be transferred.

3. Any action transferred to the Chancery Division or the Probate Division, shall, by the order directing the transfer, be directed to be assigned to one of the judges of such division to be named in the order.

4. Actions in any division or divisions may be consolidated by order of the Court or a judge in the manner heretofore in use in the Superior Courts of Common Law.

Order LI., Rule 2. This rule and the preceding one are necessary to prevent any abuse of the power to choose in which division an action shall be commenced, given to plaintiffs in sec. 11, *ante*, p. 167. See also Order V., Rule 4, *ante*, p. 197.

Order LI., Rule 3. This rule enjoins the same practice with regard to actions transferred as was already directed respecting actions commenced in the Chancery Division by Order V., Rule 4, *ante*, p. 197, which is in accordance with the previous practice in the Court of Chancery.

Order LI., Rule 4. See Order XVI., Rule 9, *ante*, p. 223, giving further powers of this nature, and the observations thereunder; also Order XVII., Rule 1, *ante*, p. 225; 36 & 37 Vict. c. 66, s. 36, *ante*, p. 124; 5 Vict. c. 5, s. 30, and Ch. C. Order VI., Rule 5.



## ORDER LII.

INTERLOCUTORY ORDERS AS TO MANDAMUS INJUNCTIONS OR  
INTERIM PRESERVATION OF PROPERTY, ETC.

1. When by any contract a *prima facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the Court or a judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into Court or otherwise secured.

2. It shall be lawful for the Court or a judge, on the application of any party to any action, to make any order for the sale, by any person or persons named in such order, and in such manner, and on such terms as to the Court or judge may seem desirable, of any goods, wares, or merchandise which may be of a perishable nature or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once.

3. It shall be lawful for a Court or a judge, upon the application of any party to an action, and upon such terms as may seem just, to make any order for the detention, preservation, or inspection of any property, being the subject of such action, and for all or any of the purposes aforesaid to authorize any person or persons to enter upon or into any land or building in the possession of any party to such action, and for all or any of the purposes aforesaid to authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

4. An application for an order under section 25, subsection 8, of the Act, or under Rules 2 or 3 of this Order, may be made to the Court or a judge by any party. If the application be by the plaintiff for an order under the said sub-section 8 it may be made either *ex parte* or with notice, and if for an order under the said Rules 2 or 3 of



Interlocutory orders as to mandamus injunctions, or interim preservation of property.

this Order it may be made after notice to the defendant at any time after the issue of the writ of summons, and if it be by any other party, then on notice to the plaintiff, and at any time after appearance by the party making the application.

5. An application for an order under Rule 1 may be made by the plaintiff at any time after his right thereto appears from the pleadings; or, if there be no pleadings, is made to appear by affidavit or otherwise to the satisfaction of the Court or a judge.

6. Where an action is brought to recover, or a defendant in his statement of defence seeks by way of counter-claim to recover specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court or a judge may, at any time after such last-mentioned claim appears from the pleadings, or, if there be no pleadings, by affidavit or otherwise to the satisfaction of such Court or judge, order that the party claiming to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as such Court or judge may direct, and that upon such payment into Court being made, the property claimed be given up to the party claiming it.

Order LII., Rule 3. These three rules give powers which may be extremely useful, but as they are very stringent, and will require to be exercised with great care to avoid perpetrating injustice, they are very properly restricted to the persons of the judges themselves, and cannot be deputed to masters or registrars. See Order LIV., Rule 2, *post*, p. 296. See Rules 4 and 5, *supra*, as to, by whom, and when applications for orders under these rules may be made. See also C. L. P. Act, 1852, ss. 114, 115; C. L. P. Act, 1874, s. 58; Patent L. A. Act, 1852, s. 42.

Order LII., Rule 6. This rule will confer the greatest benefit on plaintiffs, by enabling them at once to obtain possession of property which may be of importance to them, while it can in no case work injustice to defendants, and will often be of great service even to them.



## ORDER LIII.

## MOTIONS AND OTHER APPLICATIONS.

1. Where by these Rules any application is authorized to be made to the Court or a judge in an action, such application, if made to a Divisional Court or to a judge in Court, shall be made by motion.

2. No rule or order to shew cause shall be granted in any action, except in the cases in which an application for such rule or order is expressly authorized by these Rules.

3. Except where by the practice existing at the time of the passing of the said Act any order or rule has heretofore been made *ex parte* absolute in the first instance, and except where by these Rules it is otherwise provided, and except where the motion is for a rule to shew cause only, no motion shall be made without previous notice to the parties affected thereby. But the Court or judge, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court or judge may think just; and any party affected by such order may move to set it aside.

4. Unless the Court or judge give special leave to the contrary there must be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion.

5. If on the hearing of a motion or other application the Court or judge shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the Court or judge may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the Court or judge may think fit to impose.

6. The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the Court or judge shall think fit.

7. The plaintiff shall, without any special leave, be at



Motions  
and other  
applica-  
tions.

liberty to serve any notice of motion or other notice, or any petition or summons upon any defendant, who, having been duly served with a writ of summons to appear in the action, has not appeared within the time limited for that purpose.

8. The plaintiff may, by leave of the Court or a judge to be obtained *ex parte*, serve any notice of motion upon any defendant along with the writ of summons, or at any time after service of the writ of summons and before the time limited for the appearance of such defendant.

Order LIII., Rule 3. It is difficult to understand the reason for this rule. Its effects will be somewhat anomalous; for instance, a motion for a new trial under Order XXXIX., *ante* p. 274, will be for a rule to shew cause, while a motion to enter, set aside, or vary a judgment under Order XL., *ante* p. 275, will not be so; but cause will be shewn in the first instance, and the rule be discharged or made absolute at once, as the case may be.

## ORDER LIV.

### APPLICATIONS AT CHAMBERS.

1. Every application at chambers authorized by these Rules shall be made in a summary way by summons.

2. In the Queen's Bench, Common Pleas, and Exchequer Divisions, a master, and in the Probate, Divorce, and Admiralty Division a registrar, may transact all such business and exercise all such authority and jurisdiction in respect of the same as under the Act or the Schedule thereto, or these Rules may be transacted or exercised by a judge at chambers, except in respect of the following proceedings and matters; that is to say,—

All matters relating to criminal proceedings or to the liberty of the subject:

The removal of actions from one division or judge to another division or judge:

The settlement of issues, except by consent:

Discovery, whether of documents or otherwise, and inspection, except by consent:

Appeals from district registrars: .



Interpleader other than such matters arising in interpleader as relate to practice only, except by consent: Applications at Chambers.

Prohibitions:

Injunctions and other orders under sub-section 8 of section 25 of the Act, or under Order LII., Rules 1, 2, and 3, respectively:

Awarding of costs, other than the costs of any proceeding before such master:

Reviewing taxation of costs:

Charging orders on stock funds, annuities, or share of dividends or annual produce thereof:

Acknowledgments of married women:

3. If any matter appears to the master proper for the decision of a judge the master may refer the same to a judge, and the judge may either dispose of the matter, or refer the same back to the master with such directions as he may think fit.

4. Any person affected by any order or decision of a master may appeal therefrom to a judge at chambers. Such appeal shall be by summons, within four days after the decision complained of, or such further time as may be allowed by a judge or master.

5. An appeal from a master's decision shall be no stay of proceeding unless so ordered by a judge or master.

6. In the Queen's Bench, Common Pleas, and Exchequer Division every appeal to the Court from any decision at chambers shall be by motion, and shall be made within eight days after the decision appealed against.

Order LIV., Rule 2. This rule is somewhat similar to R. G. M. T., 1867, framed under 30 & 31 Vict. c. 68, except that rather more powers are now given to the masters. Under the above-mentioned rules there were four exceptions to their powers which do not now exist, viz.: 1. Referring causes. 2. Altering the register of joint stock companies. 3. Staying proceedings after verdict; and 4. Granting leave to sue *in formâ pauperis*. There are now also two exceptions to their powers respecting matters which did not arise before, viz., the settlement of issues, and appeals from district registrars.

From the wording of this rule it appears that by the consent of both parties jurisdiction may be given in the settlement of



issues, discovery, or interpleader; but that in the other matters excepted, they are incapable of acting either with or without consent. Order LIV., Rule 6. Two clear days' notice must be given of such appeal. See Order LIII., Rules 3 and 4, *ante*, p. 295. This Order is very carelessly framed, as under it there is no possibility of an appeal from any decision at Chambers made in vacation time more than eight days before the sitting of the Court. See 36 & 37 Vict. c. 66, s. 50, *ante*, p. 131.

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## ORDER LV.

### COSTS.

Costs.

Subject to the provisions of the Act, the costs of and incident to all proceedings in the High Court shall be in the discretion of the Court; but nothing herein contained shall deprive a trustee, mortgagee, or other person of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in Courts of Equity: Provided, that where any action or issue is tried by a jury, the costs shall follow the event, unless upon application made at the trial for good cause shewn the judge before whom such action or issue is tried or the Court shall otherwise order.

Order LV. This Order as originally framed left costs in every instance in the discretion of the Court, and thereby in one stroke repealed scores of Acts of Parliament. The last clause added in committee shortly before the passing of the Act, in consequence of the strong remonstrances of such members as belonged to the Common Law Bar, will no doubt leave costs much as they used to be in trials by jury; but it remains to be seen what effect the Court may hold the Order has on *qui tam* actions.

An additional Order in Council dated 12th of August, and published in the *London Gazette* of 24th August, 1875, gives the scale of costs to be allowed. See *post*, chap. vii.

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## ORDER LVI.

### NOTICES AND PAPER, ETC.

1. All notices required by these Rules shall be in writing, unless expressly authorized by a Court or judge to be given orally.



2. Proceedings required to be printed shall be printed on cream wove machine drawing foolscap folio paper, 19 lbs. per mill ream, or thereabouts, in pica type leaded, with an inner margin about three quarters of an inch wide, and an outer margin about two inches and a half wide. Notices and paper, &c.

3. Any affidavit may be sworn to either in print or in manuscript, or partly in print and partly in manuscript.

As to printing documents, see Additional Orders, *post*, chap. vii.

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## ORDER LVII.

### TIME.

1. Where by these Rules, or by any judgment or order given or made after the commencement of the Act, time for doing any act or taking any proceedings is limited by months, not expressed to be lunar months, such time shall be computed by calendar months. Time.

2. Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, Christmas Day, and Good Friday shall not be reckoned in the computation of such limited time.

3. Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.

4. No pleadings shall be amended or delivered in the long vacation, unless directed by a Court or a judge.

5. The time of the long vacation shall not be reckoned in the computation of the times appointed or allowed by these Rules for filing, amending, or delivering any pleading, unless otherwise directed by a Court or a judge.

6. A Court or a judge shall have power to enlarge or abridge the time appointed by these Rules, or fixed by any



order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.

Order LVII., Rule 3. This rule and the two preceding ones are most useful, and will be found to save considerable inconvenience.

Order LVII., Rule 4. This rule leaves the practice as it was before, giving power to vary it. See 2 & 3 Will. 4, c. 39, s. 11.

Order LVII., Rule 5. This is a slight variation of the previous procedure. By R. G. H. T., 1853, r. 9, it was directed that if the time for pleading had not expired *before* the 10th August, the party called on to plead should have the same number of days for that purpose as if the previous pleading had been delivered or filed on the 24th October.

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## ORDER LVIII.

### APPEALS.

1. Bills of exceptions and proceedings in error shall be abolished.

2. All appeals to the Court of Appeal shall be by way of rehearing, and shall be brought by notice of motion in a summary way, and no petition, case, or other formal proceeding other than such notice of motion shall be necessary. The appellant may by the notice of motion appeal from the whole or any part of any judgment or order, and the notice of motion shall state whether the whole or part only of such judgment or order is complained of, and in the latter case shall specify such part.

3. The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Court of Appeal may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may seem just, and may give such judgment and make such



order as might have been given or made if the persons Appeals.  
served with such notice had been originally parties. Any  
notice of appeal may be amended at any time as to the  
Court of Appeal may seem fit.

4. Notice of appeal from any judgment, whether final  
or interlocutory, shall be a fourteen days' notice, and  
notice of appeal from any interlocutory order shall be a  
four days' notice.

5. The Court of Appeal shall have all the powers and  
duties as to amendment and otherwise of the Court of  
First Instance, together with full discretionary power to  
receive further evidence upon questions of fact, such evi-  
dence to be either by oral examination in court, by  
affidavit, or by deposition taken before an examiner or  
commissioner. Such further evidence may be given with-  
out special leave upon interlocutory applications, or in any  
case as to matters which have occurred after the date of  
the decision from which the appeal is brought. Upon  
appeals from a judgment after trial or hearing of any  
cause or matter upon the merits, such further evidence  
(save as to matters subsequent as aforesaid) shall be ad-  
mitted on special grounds only, and not without special  
leave of the Court. The Court of Appeal shall have power  
to give any judgment and make any order which ought to  
have been made, and to make such further or other order  
as the case may require. The powers aforesaid may be  
exercised by the said Court, notwithstanding that the  
notice of appeal may be that part only of the decision  
may be reversed or varied, and such powers may also be  
exercised in favour of all or any of the respondents or  
parties, although such respondents or parties may not  
have appealed from or complained of the decision. The  
Court of Appeal shall have power to make such order as  
to the whole or any part of the costs of the appeal as may  
seem just.

6. It shall not, under any circumstances, be necessary  
for a respondent to give notice of motion by way of cross  
appeal, but if a respondent intends, upon the hearing of  
the appeal, to contend that the decision of the Court



Appeals.

below should be varied, he shall, within the time specified in the next rule, or such time as may be prescribed by special order, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not diminish the powers conferred by the Act upon the Court of Appeal, but may, in the discretion of the Court, be ground for an adjournment of the appeal, or for a special order as to costs.

7. Subject to any special order which may be made, notice by a respondent under the last preceding rule shall in the case of any appeal from a final judgment be an eight days' notice, and in the case of an appeal from an interlocutory order a two days' notice.

8. The party appealing from a judgment or order shall produce to the proper officer of the Court of Appeal the judgment or order or an office copy thereof, and shall leave with him a copy of the notice of appeal to be filed, and such officer shall thereupon set down the appeal by entering the same in the proper list of appeals, and it shall come on to be heard according to its order in such list, unless the Court of Appeal or a judge thereof shall otherwise direct, but so as not to come into the paper for hearing before the day named in the notice of appeal.

9. The time for appealing from any order or decision made or given in the matter of the winding up of a company under the provisions of the Companies Act, 1862, or any Act amending the same, or any order or decision made in the matter of any bankruptcy, or in any other matter not being an action, shall be the same as the time limited for appeal from an interlocutory order under Rule 15.

10. Where an ex parte application has been refused by the Court below, an application for a similar purpose may be made to the Court of Appeal ex parte within four days from the date of such refusal, or within such enlarged time as a judge of the Court below or of the Appeal Court may allow.

11. When any question of fact is involved in an appeal, the evidence taken in the Court below bearing on such



question shall, subject to any special order, be brought Appeals. before the Court of Appeal as follows :

(a.) As to any evidence taken by affidavit, by the production of printed copies of such of the affidavits as have been printed, and office copies of such of them as have not been printed.

(b.) As to any evidence given orally, by the production of a copy of the judge's notes, or such other materials as the Court may deem expedient.

12. Where evidence has not been printed in the Court below, the Court below or a judge thereof, or the Court of Appeal or a judge thereof, may order the whole or any part thereof to be printed for the purpose of the appeal. Any party printing evidence for the purpose of an appeal without such order shall bear the costs thereof, unless the Court of Appeal or a judge thereof shall otherwise order.

13. If, upon the hearing of an appeal, a question arise as to the ruling or direction of the judge to a jury or assessors, the Court shall have regard to verified notes or other evidence, and to such other materials as the Court may deem expedient.

14. No interlocutory order or rule from which there has been no appeal shall operate so as to bar or prejudice the Court of Appeal from giving such decision upon the appeal as may seem just.

15. No appeal from any interlocutory order shall, except by special leave of the Court of Appeal, be brought after the expiration of twenty-one days, and no other appeal shall, except by such leave, be brought after the expiration of one year. The said respective periods shall be calculated from the time at which the judgment or order is signed, entered, or otherwise perfected, or, in the case of the refusal of an application, from the date of such refusal. Such deposit or other security for the costs to be occasioned by any appeal shall be made or given as may be directed under special circumstances by the Court of Appeal.

16. An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the Court appealed from, or any judge thereof,



or the Court of Appeal, may so order; and no intermediate act or proceeding shall be invalidated, except so far as the Court appealed from may direct.

17. Wherever under these Rules an application may be made either to the Court below or to the Court of Appeal, or to a judge of the Court below or of the Court of Appeal, it shall be made in the first instance to the Court or judge below.

18. Every application to a judge of the Court of Appeal shall be by motion, and the provisions of Order LIII. shall apply thereto.

As to accepting to a judge's ruling, see observations, *ante*, pp. 88, 103, 174; C. L. P. Act, 1852, s. 1; C. L. P. Act, 1854, s. 38; Ch. C. Order XXXIX., Rules 2, 4.

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## ORDER LIX.

### EFFECT OF NON-COMPLIANCE.

Non-compliance with any of these Rules shall not render the proceedings in any action void unless the Court or a judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court or judge shall think fit.

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## ORDER LX.

### OFFICERS.

1. All officers who at the time of the commencement of the said Act shall be attached to the Court of Chancery shall be attached to the Chancery Division of the said High Court; and all officers who at the time of the commencement of the said Act shall be attached to the Court of Queen's Bench shall be attached to the Queen's Bench Division of the said High Court; and all officers who at the time of the commencement of the said Act shall be attached to the Court of Common Pleas shall be attached to the Common Pleas Division of the said High Court; and all officers who at the time of the commencement of



the said Act shall be attached to the Court of Exchequer <sup>Officers.</sup> shall be attached to the Exchequer Division of the said High Court; and all officers who at the time of the commencement of the said Act shall be attached to the Court of Probate, the Court of Divorce, and the Court of Admiralty respectively, shall be attached to the Probate, Divorce, and Admiralty Division of the said High Court.

2. Officers attached to any division shall follow the appeals from the same division, and shall perform in the Court of Appeal analogous duties in reference to such appeals as the registrars and officers of the Court of Chancery usually performed as to re-hearings in the Court of Appeal in Chancery, and as the masters and officers of the Courts of Queen's Bench, Common Pleas, and Exchequer respectively performed as to appeals heard by the Court of Exchequer Chamber.

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## ORDER LXI.

### SITTINGS AND VACATIONS.

1. The sittings of the Court of Appeal and the sittings <sup>Sittings and vaca-  
tions.</sup> in London and Middlesex of the High Court of Justice shall be four in every year, viz., the Michaelmas sittings, the Hilary sittings, the Easter sittings, and the Trinity sittings.

The Michaelmas sittings shall commence on the 2nd of November and terminate on the 21st of December; the Hilary sittings shall commence on the 11th of January and terminate on the Wednesday before Easter; the Easter sittings shall commence on the Tuesday after Easter week, and terminate on the Friday before Whitsunday.

The Trinity sittings shall commence on the Tuesday after Whitsun week and terminate on the 8th of August.

2. The vacations to be observed in the several courts and offices of the Supreme Court shall be four in every



Sittings  
and vaca-  
tions.

year, viz., the Long vacation, the Christmas vacation, the Easter vacation, and the Whitsun vacation.

The Long vacation shall commence on the 10th of August and terminate on the 24th of October. The Christmas vacation shall commence on the 24th of December, and terminate on the 6th of January.

The Easter vacation shall commence on Good Friday and terminate on Easter Tuesday, and the Whitsun vacation shall commence on the Saturday before Whitsunday and shall terminate on the Tuesday after Whitsunday.

3. The days of the commencement and termination of each sitting and vacation shall be included in such sitting and vacation respectively.

4. The several offices of the Supreme Court shall be open on every day of the year, except Sundays, Good Friday, Monday and Tuesday in Easter week, Whit Monday, Christmas day, and the next following working day, and all days appointed by proclamation to be observed as days of general fast, humiliation, or thanksgiving.

5. Two of the judges of the High Court shall be selected at the commencement of each long vacation for the hearing in London or Middlesex during vacation of all such applications as may require to be immediately or promptly heard. Such two judges shall act as vacation judges for one year from their appointment. In the absence of arrangement between the judges, the two vacation judges shall be the two judges last appointed (whether as judges of the said High Court or of any Court whose jurisdiction is by the said Act transferred to the said High Court) who have not already served as vacation judges of any such Court, and if there shall not be two judges for the time being of the said High Court who shall not have so served, then the two vacation judges shall be the judge (if any) who has not so served, and the senior judge or judges who has or have so served once only according to seniority of appointment, whether in the said High Court or such other Court as aforesaid. The Lord Chancellor shall not be liable to serve as a vacation judge.

6. The vacation judges may sit either separately or to-



gether as a Divisional Court as occasion shall require, and may hear and dispose of all actions, matters, and other business to whichever division the same may be assigned. No order made by a vacation judge shall be reversed or varied except by a divisional Court or the Court of Appeal, or a judge thereof, or the judge who made the order. Any other judge of the High Court may sit in vacation for any vacation judge.

Sittings  
and vaca-  
tions.

7. The vacation judges of the High Court may dispose of all actions, matters, and other business of an urgent nature during any interval between the sittings of any division of the High Court to which such business may be assigned, although such interval may not be called or known as a vacation.

Order LXI. This order makes a sweeping and a valuable change in the times of the sittings of the Court. While preserving the long vacation, which experience has shewn to be for the general benefit, it has considerably lengthened the periods of the sittings of the Courts, the word "sittings" being substituted for "term." The present four sittings will last over thirty-two weeks, instead of being crowded into about twelve as the terms used to be, while it is provided by the Judicature Act, 1873, s. 30, *ante*, p. 118, that, subject to vacations, which (with the exception of the long vacation) are very short, trials at nisi prius in Middlesex and London shall be nearly continuous; see 36 & 37 Vict. c. 66, ss. 27, 28, *ante*, p. 116.

## ORDER LXII.

### EXCEPTIONS FROM THE RULES.

Nothing in these Rules shall affect the practice or procedure in any of the following causes or matters:—

Exceptions  
from the  
Rules.

Criminal proceedings:

Proceedings on the Crown side of the Queen's Bench Division:

Proceedings on the Revenue side of the Exchequer Division.

Proceedings for Divorce or other Matrimonial Causes.

Order LXII. See sec. 19 of this Act, excepting all criminal proceedings from the fresh procedure, *ante*, p. 173.



## ORDER LXIII.

## INTERPRETATION OF TERMS.

Interpreta-  
tion of  
terms.

The provisions of the 100th section of the Act shall apply to these Rules.

In the construction of these Rules, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned or referred to shall have or include the meanings following :—

“ Person ” shall include a body corporate or politic :

“ Probate actions ” shall include actions and other matters relating to the grant or recall of probate or of letters of administration other than common form business :

“ Proper officer ” shall, unless and until any rule to the contrary is made, mean an officer to be ascertained as follows :—

(a.) Where any duty to be discharged under the Act or these Rules is a duty which has heretofore been discharged by any officer, such officer shall continue to be the proper officer to discharge the same :

(b.) Where any new duty is under the Act or these Rules to be discharged, the proper officer to discharge the same shall be such officer, having previously discharged analogous duties, as may from time to time be directed to discharge the same, in the case of an officer of the Supreme Court, or the High Court of Justice, or the Court of Appeal, not attached to any division, by the Lord Chancellor, and in the case of an officer attached to any division, by the president of the division, and in the case of an officer attached to any judge, by such judge :

“ The Act ” and “ the said Act ” shall respectively mean the Supreme Court of Judicature Act, 1873, as amended by this Act.

See sec. 100, *ante*, p. 155 ; see also Additional Rules of Court, *post*, chap. vii.



## FIRST SCHEDULE.

### APPENDICES.

*Summary of the Forms provided in the Appendices A, B, C, D, E, F, to the Supreme Court of Judicature Act, 1875.*

It will be observed that many of these forms are very verbose; and although the Act only requires precise information of the nature of the claim and defence, as the case may be, the forms of pleading are often uselessly prolix, and contain matter which could have been dispensed with. These forms, however, need not be entirely followed; it is only necessary that they be in conformity with the spirit of the Act. We have already made some observations respecting pleadings generally (a); and we have settled other forms than those comprised in Appendix C, in the hope of supplying some deficiencies, and giving practical effect to the presumed intentions of the Legislature (b).

Summary  
of Forms.

#### APPENDIX A.

##### PART I.

*Forms of Writs of Summons, and appearances and proceedings in reference thereto . . . . . Pages 310–314*

##### PART II.

*General indorsements upon writs . . . . . Pages 314–325*

#### APPENDIX B.

*Notices by defendants to third parties—Confession of defences—Notice of payment into Court—Acceptance of sum paid into Court—Form of and answers to interrogatories—Affidavits as to documents—Notices to produce—Notices to inspect—Notices to admit—Setting down special case—Notices of trial—Form of certificate after trial by jury—Affidavit of scripts . . . . . Pages 326–333*

(a) Ante, pp. 86, 139, 157, 171, 172, p. 304, and Appendix C, post, p. 333.  
178, 189, 227–241; Order lix. ante, (b) Post, chap. vi.



APPENDIX C.

Summary of Forms.	PLEADINGS GENERALLY, forms of statement of claims, defences, and replies in the following actions:—Accounts stated—Administration of Estates—Agency—Bills of exchange—Bills of lading—Bottomry—Charterparty—Collision—Equipment of a ship—False imprisonment—Foreclosure (defence, counter-claim, and reply)—Fraud—Guarantee—Interest suit (Probate)—Landlord and tenant—Necessaries for ship—Negligence—Possession of ship—Promissory note—Probate of will in solemn form—Recovery of land—Landlord and tenant—Salvage—Trespass to land—Demurrers . . . . .	Pages 333–385.
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APPENDIX D.

Forms of judgments . . . . .	Page 386
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APPENDIX E.

Forms of præcipe for writs, viz.:—Fieri facias—Elegit—Venditioni expnas—Fieri facias de bonis ecclesiasticis—Sequestrari facias de bonis ecclesiasticis—Writ of sequestration—Writ of possession—Writ of delivery—Writ of attachment.

APPENDIX F.

Forms of writs mentioned in Appendix E, together with other writs..

SCHEDULE 2—Repeal of Statutes.

APPENDIX A.

PART I.

FORMS OF WRITS OF SUMMONS, &c.

Title in full.	No. 1.
	187 . . [Here put the letter and number.]
In the High Court of Justice.	Between A.B. Plaintiff,
Division.	and
	C.D. and E.F. Defendants.
VICTORIA, by the grace of God, &c.	
To C.D. of in the county of and E.F. of .	
We command you, That within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Division of Our High Court of Justice in an action at the suit of A.B.; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence. Witness, &c.	



*Memorandum to be subscribed on the writ.*

N.B.—This writ is to be served within (*twelve*) calendar months from the date thereof, or if renewed, from the date of such renewal, including the day of such date, and not afterwards. Forms of writs of summons.

The defendant [*or defendants*] may appear hereto by entering an appearance [*or appearances*] either personally or by solicitor at the [ ] office at .

*Indorsements to be made on the writ before issue thereof. (a)*

The plaintiff's claim is for, &c.

This writ was issued by E.F., of solicitor for the said plaintiff, who resides at , or, this writ was issued by the plaintiff in person who resides at [mention the city, town, or parish, and also the name of the street and number of the house of the plaintiff's residence, if any].

*Indorsement to be made on the writ after service thereof.*

This writ was served by X.Y. on L.M. [the defendant or one of the defendants], on Monday, the day of , 18 .  
(Signed) X.Y.

## No. 2.

*Writ for service out of the jurisdiction, or where notice in lieu of service is to be given out of the jurisdiction.* When out of the jurisdiction.

187 . [*Here put the letter and number.*]  
In the High Court of Justice. Between A.B. Plaintiff,  
Division. and  
C.D. and E.F. Defendants.  
VICTORIA, by the grace of God, &c.

To C.D. of

We command you, C.D., that within [*here insert the number of days directed by the Court or judge ordering the service or notice*] after the service of this writ [*or notice of this writ, as the case may be*] on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Division of Our High Court of Justice in an action at the suit of A.B.; and take notice, that in default of your so doing the plaintiff may, by leave of the Court or a judge, proceed therein, and judgment may be given in your absence. Witness, &c.

*Memoranda and Indorsements as in Form No. 1.*

*Indorsement to be made on the writ before the issue thereof.*

N.B.—This writ is to be used where the defendant or all the defendants or one or more defendant or defendants is or are out of the jurisdiction. (b)

(a) See Order ii., Rule 3; Order iv., Rule 1; Order v., Rules 2 and 3; ante, pp. 192, 195, 197.

(b) See Order ii., Rule 5, ante, p. 192.



## No. 3.

Notice of writ in lieu of service out of jurisdiction.

*Notice of Writ in lieu of service to be given out of the jurisdiction.*

187 . [*Here put the letter and number.*]

Between *A.B.* Plaintiff,  
and

*C.D., E.F., and G.H.* Defendants.

To *G.H.*, of

Take notice, that *A.B.*, of      has commenced an action against you, *G.H.*, in the      Division of Her Majesty's High Court of Justice in England, by writ of that Court, dated the      day of      , A.D. 18      ; which writ is indorsed as follows [*copy in full the indorsements*], and you are required within      days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said Court to the said action; and in default of your so doing, the said *A.B.* may, by leave of the Court or a judge, proceed therein, and judgment may be given in your absence.

You may appear to the said writ by entering an appearance personally or by your solicitor at the [      ] office at      .

(Signed)      *A.B.* of      &c.

or

*X.Y.* of      &c.

Solicitor for *A.B.*

In the High Court of Justice.

Division. (c)

## No. 4.

Admiralty writ.

*Writ in Admiralty action in rem.*

187 . [*Here put the letter and number.*]

In the High Court of Justice.

Admiralty Division.

Between *A.B.*, Plaintiff,

and

Owners.

VICTORIA, &c.

To the owners and parties interested in the ship or vessel [*Mary*] [*or cargo, &c., as the case may be*] of the port of      .

We hereby authorize      officer of Our Supreme Court, and all and singular his substitutes, to arrest the ship or vessel [*Mary*], of the port of      and the cargo laden therein [*or cargo, &c., as the case may be*], and to keep the same under safe arrest until he shall receive further orders from Us. And We command you, the owners and other parties

(c) See Order ii., Rule 5, ante, p. 195.



interested in the said ship and cargo [*or cargo, &c., as the case may be*] that within eight days after the arrest of the said vessel [*or cargo, &c., as the case may be*] you do cause an appearance to be entered for you in the Admiralty Division of Our High Court of Justice in an action at the suit of *A.B.*; and take notice, that in default of your so doing Our said Court will proceed to hear the said action and to pronounce judgment therein, your absence notwithstanding. (*d*)

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No. 5.

*Form of Memorandum for Renewed Writ.*

In the High Court of Justice.

Division.

Between *A.B.*, Plaintiff,

and

*C.D.*, Defendant.

Seal renewed writ of summons in this action indorsed as follows:—

[*Copy original writ and the indorsements.*] (*e*)

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No. 6.

*Memorandum of Appearance.*

Appearances.

187 . [*Here put the letter and number.*]

High Court of Justice.

[*Chancery*] Division.

*A.B.* v. *C.D.*, and others.

Enter an appearance for in this action.

Dated this day of

*X.Y.*,

Solicitor for the Defendant.

The place of business of *X.Y.* is

His address for service is

or [*C.D.*,

Defendant in person.

The address of *C.D.* is

His address for service is .]

The said defendant [*requires, or, does not require*] a statement of complaint to be filed and delivered. (*f*)

(*d*) See Order ii., Rule 7; Order v., Rules 11, 12, ante, pp. 193, 198–9. (*e*) See Order viii., Rule 1, ante, p. 202.

(*f*) See Order xii., Rule 10, ante, p. 209.



No. 7.

[Here put the letter and number.]

In the High Court of Justice.

Queen's Bench (or Chancery, C.P., or, &amp;c.) Division.

Between A.B., Plaintiff,

and

C.D., and

E.F., Defendants.

The defendant C.D. limits his defence to part only of the property mentioned in the writ in this action, that is to say, to the close called "the Big field."

Yours, &amp;c.

G.H.,

Solicitor for the said defendant C.D.

To Mr. X.Y., plaintiff's solicitor (g).

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## PART II.

### SECTION I.

#### GENERAL INDORSEMENTS.

GENERAL  
INDORSE-  
MENTS.

Chancery.

*In Matters assigned by the 34th Section (h) of the Act to the Chancery Division.*

#### 1. Creditor to administer Estate.

The plaintiff's claim is as a creditor of X.Y., of                      deceased, to have the [real and] personal estate of the said X.Y. administered. The defendant C.D. is sued as the administrator of the said X.Y. [and the defendants E.F. and G.H. as his co-heirs-at-law].

#### 2. Legatee to administer Estate.

The plaintiff's claim is as a legatee under the will dated the day of              18    ; of X.Y. deceased, to have the [real and] personal estate of the said X.Y. administered. The defendant C.D. is sued as the executor of the said X.Y. [and the defendants E.F. and G.H. as his devisees.]

#### 3. Partnership.

The plaintiff's claim is to have an account taken of the partnership dealings between the plaintiff and defendant [under articles of partnership dated the              day of              ], and to have the affairs of the partnership wound up.

#### 4. By Mortgagees.

The plaintiff's claim is to have an account taken of what is due to

(g) See Order xii., Rule 22, ante, p. 210.

(h) See ante, pp. 15, 101, 105, 121, 167, 171, 174; and post, cc. vi., ix.



him for principal, interest, and costs on a mortgage dated the       day       Chancery.  
of       made between       [or by deposit of title deeds], and that the  
mortgage may be enforced by foreclosure or sale.

#### 5. *By Mortgagor.*

The plaintiff's claim is to have an account taken of what, if any-  
thing, is due on a mortgage dated       and made between [parties],  
and to redeem the property comprised therein.

#### 6. *Raising Portions.*

The plaintiff's claim is that the sum of       £., which by an inden-  
ture of settlement dated       , was provided for the portions of the  
younger children of       may be raised.

#### 7. *Execution of Trusts.*

The plaintiff's claim is to have the trusts of an indenture dated  
and made between       , carried into execution.

#### 8. *Cancellation or Rectification.*

The plaintiff's claim is to have a deed dated       and made between  
[parties], set aside or rectified.

#### 9. *Specific Performance.*

The plaintiff's claim is for specific performance of an agreement dated  
the       day of       for the sale by the plaintiff to the defendant of  
certain [freehold] hereditaments at

### SECTION II.

#### *Money Claims where no Special Indorsement (i) under Order III., Rule 6.*

#### GENERAL INDORSE- MENTS.

The plaintiff's claim is	£. for the price of goods sold.	Goods sold.
[This Form shall suffice whether the claim be in respect of goods sold and delivered, or of goods bargained and sold.]		
The plaintiff's claim is	£. for money lent [and interest].	Money lent.
The plaintiff's claim is	£., whereof       £. is for the price of	Several
goods sold, and       £. for money lent, and       £. for interest.		demands.
The plaintiff's claim is	£. for arrears of rent.	Rent.
The plaintiff's claim is	£. for arrears of salary as a clerk [or as	Salary, &c.
the case may be].		
The plaintiff's claim is	£. for interest upon money lent.	Interest.
The plaintiff's claim is	£. for a general average contribution.	General average.
The plaintiff's claim is	£. for freight and demurrage.	Freight, &c.
The plaintiff's claim is	£. for lighterage.	
The plaintiff's claim is	£. for market tolls and stallage.	Tolls.

(i) See ante, p. 194.



Penalties.	The plaintiff's claim is [ . . . . ].	l. for penalties under the Statute
Banker's balance.	The plaintiff's claim is dant as a banker.	l. for money deposited with the defen-
Fees, &c., as solicitors.	The plaintiff's claim is <i>money expended</i> as a solicitor.	l. for fees for work done [ <i>and</i> l.
Commission.	The plaintiff's claim is <i>character as auctioneer, cotton broker, &amp;c.</i> ].	l. for commission earned as [ <i>state</i>
Medical attendance, &c.	The plaintiff's claim is	l. for medical attendances.
Return of premium.	The plaintiff's claim is policies of insurance.	l. for a return of premiums paid upon
Warehouse rent.	The plaintiff's claim is	l. for the warehousing of goods.
Carriage of goods.	The plaintiff's claim is	l. for the carriage of goods by railway.
Use and occupation of houses.	The plaintiff's claim is	l. for the use and occupation of a house.
Hire of goods.	The plaintiff's claim is	l. for the hire of [ <i>furniture</i> ].
Work done.	The plaintiff's claim is	l. for work done as a surveyor.
Board and lodging.	The plaintiff's claim is	l. for board and lodging.
Schooling.	The plaintiff's claim is of X. Y.	l. for the board, lodging, and tuition
Money received.	The plaintiff's claim is as solicitor [ <i>or factor, or collector, or, &amp;c.</i> ] of the plaintiff.	l. for money received by the defendant
Fees of office.	The plaintiff's claim is under colour of the office of	l. for fees received by the defendant
Money over-paid.	The plaintiff's claim is the carriage of goods by railway.	l. for a return of money overcharged for
	The plaintiff's claim is the defendant as	l. for a return of fees overcharged by
Return of money by stakeholder.	The plaintiff's claim is the defendant as stakeholder.	l. for a return of money deposited with
Money won, from stakeholder.	The plaintiff's claim is as stakeholder, and become payable to plaintiff.	l. for money entrusted to the defendant
Money entrusted to agent.	The plaintiff's claim is the defendant as agent of the plaintiff.	l. for a return of money entrusted to
Money obtained by fraud.	The plaintiff's claim is the plaintiff by fraud.	l. for a return of money obtained from
Money paid by mistake.	The plaintiff's claim is defendant by mistake.	l. for a return of money paid to the
Money paid for consideration which has failed.	The plaintiff's claim is defendant for [ <i>work to be done, left undone; or, a bill to be taken up, not taken up, or, &amp;c.</i> ]	l. for a return of money paid to the
	The plaintiff's claim is deposit upon shares to be allotted.	l. for a return of money paid as a
Money paid by surety for defendant.	The plaintiff's claim is his surety.	l. for money paid for the defendant as
Rent paid.	The plaintiff's claim is defendant.	l. for money paid for rent due by the



The plaintiff's claim is           *l.* upon a bill of exchange accepted [*or indorsed*] for the defendant's accommodation.   Money paid on accommodation bill.

The plaintiff's claim is           *l.* for a contribution in respect of money paid by the plaintiff as surety.   Contribution by surety.

The plaintiff's claim is           *l.* for a contribution in respect of a joint debt of the plaintiff and the defendant, paid by the plaintiff.   By co-debtor.

The plaintiff's claim is           *l.* for money paid for calls upon shares, against which the defendant was bound to indemnify the plaintiff.   Money paid for calls.

The plaintiff's claim is           *l.* for money payable under an award.   Money payable under award.

The plaintiff's claim is           *l.* upon a policy of insurance upon the life of *X. Y.*, deceased.   Life policy.

The plaintiff's claim is           *l.* upon a bond to secure payment of 1,000*l.*, and interest.   Money bond.

The plaintiff's claim is           *l.* upon a judgment of the Court, in the Empire of Russia.   Foreign judgment.

The plaintiff's claim is           *l.* upon a cheque drawn by the defendant.   Bills of exchange, &c.

The plaintiff's claim is           *l.* upon a bill of exchange accepted [*or drawn or indorsed*] by the defendant.

The plaintiff's claim is           *l.* upon a promissory note made [*or indorsed*] by the defendant.

The plaintiff's claim is           *l.* against the defendant *A. B.* as acceptor, and against the defendant *C. D.* as drawer [*or indorser*] of a bill of exchange.

The plaintiff's claim is           *l.* against the defendant as surety for the price of goods sold.   Surety.

The plaintiff's claim is           *l.* against the defendant *A. B.* as principal, and against the defendant *C. D.* as surety, for the price of goods sold [*or arrears of rent, or for money lent, or for money received by the defendant A. B. as traveller for the plaintiffs, or, &c.*].

The plaintiff's claim is           *l.* against the defendant as a *del credere* agent for the price of goods sold [*or as losses under a policy*].   *Del credere agent.*

The plaintiff's claim is           *l.* for calls upon shares.   Calls.

The plaintiff's claim is           *l.* for crops, tillage, manure [*or as the case may be*] left by the defendant as outgoing tenant of a farm.   Waygoing crops, &c.

### SECTION III.

#### *Indorsement for Costs, &c. [add to the above Forms].*

And           *l.* for costs; and if the amount claimed be paid to the plaintiff or his solicitor within four days [*or if the writ is to be served out of the jurisdiction, or notice in lieu of service allowed, insert the time for appearance limited by the order*] from the service hereof, further proceedings will be stayed (*k*).

(*k*) See Order iii., Rule 7, ante, p. 194.



## SECTION IV.

*Damages and other Claims.*

- Agent, &c.** The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as traveller.  
 The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller [*and l. for arrears of wages*].  
 The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.  
 The plaintiff's claim is for damages for breach of duty as factor [*or, &c.*] of the plaintiff [*and l. for money received as factor, &c.*].
- Apprentices.** The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of X.Y. to the defendant [*or plaintiff*].
- Arbitration.** The plaintiff's claim is for damages for non-compliance with the award of X.Y.
- Assault, &c.** The plaintiff's claim is for damages for assault [*and false imprisonment, and for malicious prosecution*].
- By husband and wife.** The plaintiff's claim is for damages for assault and false imprisonment of the plaintiff C.D.
- Against husband and wife.** The plaintiff's claim is for damages for assault by the defendant C.D.
- Solicitor.** The plaintiff's claim is for damages for injury by the defendant's negligence as solicitor of the plaintiff.
- Bailment.** The plaintiff's claim is for damages for negligence in the custody of goods [*and for wrongfully detaining the same*].
- Pledge.** The plaintiff's claim is for damages for negligence in the keeping of goods pawned [*and for wrongfully, detaining the same*].
- Hire.** The plaintiff's claim is for damages for negligence in the custody of furniture lent on hire [*or a carriage lent*], [*and for wrongfully, &c.*]
- Banker.** The plaintiff's claim is for damages for wrongfully neglecting [*or refusing*] to pay the plaintiff's cheque.
- Bill.** The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts.
- Bond.** The plaintiff's claim is upon a bond conditioned not to carry on the trade of a
- Carrier.** The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway.  
 The plaintiff's claim is for damages for refusing to carry the plaintiff by railway.  
 The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway.  
 The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.
- Charter-party.** The plaintiff's claim is for damages for breach of charterparty of ship [*Mary*].
- Claim for return of goods; damages.** The plaintiff's claim is for return of household furniture, or, &c., or their value, and for damages for detaining the same.



The plaintiff's claim is for wrongfully depriving plaintiff of goods, household furniture, &c. Damages for depriving of goods.

The plaintiff's claim is for damages for libel. Defamation.

The plaintiff's claim is for damages for slander.

The plaintiff's claim is in replevin for goods wrongfully distrained. Distress.  
Replevin.

The plaintiff's claim is for damages for improperly distraining. Wrongful distress.

*[This Form shall be sufficient whether the distress complained of be wrongful or excessive, or irregular, and whether the claim be for damages only, or for double value.]*

The plaintiff's claim is to recover possession of a house, No. \_\_\_\_\_ in \_\_\_\_\_ street, or a farm called Blackacre, situate in the parish of \_\_\_\_\_ in the county of \_\_\_\_\_.

The plaintiff's claim is to establish his title to *[here describe property]*, and to recover the rents thereof. To establish title and recover rents.

*[The two previous Forms may be combined.]*

The plaintiff's claim is for dower. Dower.

The plaintiff's claim is for damages for infringement of the plaintiff's right of fishing. Fishery.

The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of a horse *[or a business, or shares, or, &c.]* Fraud.

The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of *A.B.*

The plaintiff's claim is for damages for breach of a contract of guarantee for *A.B.* Guarantee.

The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to distrain.

The plaintiff's claim is for a loss under a policy upon the ship "Royal Charter," and freight or cargo *[or for return of premiums]*. Insurance.

*[This Form shall be sufficient whether the loss claimed be total or partial.]*

The plaintiff's claim is for a loss under a policy of fire insurance upon house and furniture. Fire insurance.

The plaintiff's claim is for damages for breach of a contract to insure a house.

The plaintiff's claim is for damages for breach of contract to keep a house in repair. Landlord and tenant.

The plaintiff's claim is for damages for breaches of covenants contained in a lease of a farm.

The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man. Medical man.

The plaintiff's claim is for damages for injury by the defendant's dog. Mischievous animal.

The plaintiff's claim is for damages for injury to the plaintiff *[or, if by husband and wife, to the plaintiff, C.D.]* by the negligent driving of the defendant or his servants. Negligence.

The plaintiff's claim is for damages for injury to the plaintiff while a



passenger on the defendants' railway by the negligence of the defendants' servants.

The plaintiff's claim is for damages for injury to the plaintiff at the defendants' railway station, from the defective condition of the station.

Lord Campbell's Act.

The plaintiff's claim is as executor of *A.B.* deceased, for damages for the death of the said *A.B.*, from injuries received while a passenger on the defendants' railway, by the negligence of the defendants' servants.

Promise of marriage.

The plaintiff's claim is for damages for breach of promise of marriage.

Quare impedit.

The plaintiff's claim is in quare impedit for

Seduction.

The plaintiff's claim is for damages for the seduction of the plaintiff's daughter.

Sale of goods.

The plaintiff's claim is for damages for breach of contract to accept and pay for goods.

The plaintiff's claim is for damages for non-delivery [*or short delivery, or defective quality, or other breach of contract of sale*] of cotton [*or, &c.*]

The plaintiff's claim is for damages for breach of warranty of a horse.

Sale of land.

The plaintiff's claim is for damages for breach of a contract to sell [*or purchase*] land.

The plaintiff's claim is for damages for breach of a contract to let [*or take*] a house.

The plaintiff's claim is for damages for breach of a contract to sell [*or purchase*] the lease, with goodwill, fixtures, and stock in trade of a public-house.

The plaintiff's claim is for damages for breach of covenant for title [*or for quiet enjoyment, or, &c.*] in a conveyance of land.

Trespass to land.

The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well [*or cutting his grass, or pulling down his timber, or pulling down his fences, or removing his gate, or using his road or path, or crossing his field, or depositing sand there, or carrying away gravel from thence, or carrying away stones from his river*].

Support.

The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land [*or house, or mine*].

Way.

The plaintiff's claim is for damages for wrongfully obstructing a way [*public highway or a private way*].

Watercourse, &c.

The plaintiff's claim is for damages for wrongfully diverting [*or obstructing, or polluting, or diverting water from*] a watercourse.

The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land [*or into the plaintiff's mine*].

The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.

Pasture.

The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture.

[*This Form shall be sufficient whatever the nature of the right to pasture be.*]



The plaintiff's claim is for damages for obstructing the access of Light.  
light to plaintiff's house.

The plaintiff's claim is for damages for the infringement of the plain- Sporting.  
tiff's right of sporting.

The plaintiff's claim is for damages for the infringement of the Patent.  
plaintiff's patent.

The plaintiff's claim is for damages for the infringement of the Copyright.  
plaintiff's copyright.

The plaintiff's claim is for damages for wrongfully using [*or imita- Trade mark.*  
*ting*] the plaintiff's trade mark.

The plaintiff's claim is for damages for breach of a contract to build Work.  
a ship [*or to repair a house, &c.*]

The plaintiff's claim is for damages for breach of a contract to employ  
the plaintiff to build a ship, &c.

The plaintiff's claim is for damages to his house, trees, crops, &c., Nuisance.  
caused by noxious vapours from the defendant's factory [*or, &c.*]

The plaintiff's claim is for damages from nuisance by noise from the  
defendant's works [*or stables, or, &c.*]

The plaintiff's claim is for damages for loss of the plaintiff's goods in Innkeeper.  
the defendant's inn.

Add to Indorsement:—

And for a mandamus.

Mandamus.

Add to Indorsement:—

And for an injunction.

Injunction.

*Add to Indorsement where claim is to land, or to establish title, or both.*

And for mesne profits.

Mesne profits.

And for an account of rents or arrears of rent.

Arrears of  
rent.

And for breach of covenant for [*repairs*].

Breach of  
covenant.

## SECTION V.

### *Probate (1).*

1. *By an executor or legatee propounding a will in solemn form.*

PROBATE.

The plaintiff claims to be executor of the last will dated the  
day of of C.W., late of Gentleman, deceased, who  
died on the day of and to have the said will established.  
This writ is issued against you as one of the next of kin of the said  
deceased [*or as the case may be*].

2. *By an executor or legatee of a former will, or a next of kin, &c.,  
of the deceased seeking to obtain the revocation of a Probate granted in  
common form.*

The plaintiff claims to be executor of the last will dated the

day of of C.D., late of Gentleman, deceased, who

(1) See ante, pp. 20, 93, 123, 127, 139, 140, 142, 161, 168, 173, 227, 296,  
and post, chap. ix.



died on the       day of       , and to have the probate of a pretended will of the said deceased, dated the       day of       revoked. This writ is issued against you as the executor of the said pretended will [*or as the case may be*].

3. *By an executor or legatee of a will when letters of administration have been granted as in an intestacy.*

The plaintiff claims to be executor of the last will of C.D., late of       Gentleman, deceased, who died on the       day of       dated the       day of      

The plaintiff claims that the grant of letters of administration of the personal estate of the said deceased obtained by you should be revoked, and probate of the said will granted to him.

4. *By a person claiming a grant of administration as a next of kin of the deceased, but whose interest as next of kin is disputed.*

The plaintiff claims to be the brother and sole next of kin of C.D., of       Gentleman, deceased, who died on the       day of       intestate, and to have as such a grant of administration to the personal estate of the said intestate. This writ is issued against you because you have entered a caveat, and have alleged that you are the sole next of kin of the deceased [*or as the case may be*].

#### (g.) SECTION VI.

##### *Admiralty (m).*

Admiralty.

##### 1. *Damage to vessel by collision.*

The plaintiffs as owners of the vessel "Mary," of the port of       claim 1000*l.* against the brig or vessel "Jane" for damage occasioned by a collision, which took place in the North Sea in the month of May last.

##### 2. *Damage to cargo by collision.*

The plaintiffs as owners of the cargo laden on board the vessel "Mary," of the port of       , claim £       against the vessel "Jane," for damage done to the said cargo in a collision in the North Sea in the month of May last.

[The two previous forms may be combined.]

##### 3. *Damage to cargo otherwise.*

The plaintiff as owner of goods laden on board the vessel "Mary," on a voyage from Lisbon to England, claims from the owner of the said vessel £       for damage done to the said goods during such voyage.

##### 4. *In causes of possession.*

The plaintiff as sole owner of the vessel "Mary," of the port of       claims to have possession decreed to him of the said vessel.

5. The plaintiff claims possession of the vessel "Mary," of the port of       as owner of 48-64th shares of the said vessel against C.D., owner of 16-64th shares of the said vessel.

(m) See ante, pp. 18, 93, 123, 127, 139, 141, 168, 172, 227, 296, and post, chap. ix.



6. The plaintiff as part owner of the vessel "Mary," claims against *C.D.*, part owner and his shares in the said vessel £            as part of the earnings of the said vessel due to plaintiff. Indorsements.

7. The plaintiff as owner of 48-64th shares of the vessel "Mary," of the port of           , claims possession of the said brig as against *C.D.*, the master thereof.

8. The plaintiff under a mortgage, dated the            day of           , claims against the vessel "Mary" £           , being the amount of his mortgage thereon, and £            for interest.

9. The plaintiff as assignee of a bottomry bond, dated the            day of           , and granted by *C.D.* as master of the vessel "Mary," of the port of           , to *A.B.* at St. Thomas's, in the West Indies, claims £            against the vessel "Mary," and the cargo laden thereon.

10. *By a part owner of a vessel.*

The plaintiff as owner of 24-64th shares of the vessel "Mary," being dissatisfied with the management of the said vessel by his co-owners, claims that his co-owners shall give him a bond in £            for the value of the plaintiff's said shares in the said vessel.

11. The plaintiffs as owners of the derelict vessel "Mary," of the port of           , claim to be put in possession of the said vessel and her cargo.

12. *By Salvors.*

The plaintiffs as the owners, master, and crew of the vessel "Caroline," of the port of           , claim the sum of £            for salvage services performed by them to the vessel "Mary," off the Goodwin Sands, on the            day of           .

13. *Claim for Towage.*

The plaintiffs as owners of the steam-tug "Jane," of the port of           , claim £            for towage services performed by the said steam-tug to the vessel "Mary," on the            day of           .

14. *Seamen's Wages.*

The plaintiffs as seamen on board the vessel "Mary," claim £            for wages due to them, as follows (1), the mate 30% for two months' wages from the            day of           .

15. *For Necessaries.*

The plaintiffs claim £            for necessaries supplied to the vessel "Mary," at the port of Newcastle-on-Tyne, delivered on the            day of           , and the            day of           .

## SECTION VII.

### *Special Indorsements under Order III. (n), Rule 6.*

Special indorsements.

1. The plaintiff's claim is for the price of goods sold. The following are the particulars:—

(n) See ante, p. 194.



Special in-  
dorsements.

1873—31st December.					
Balance of account for butcher's meat to	£	s.	d.		
this date .. .. .	35	10	0		
1874—1st January to 31st March.					
Butcher's meat supplied .. ..	74	5	0		
				109	15 0
1874—1st February.—Paid .. ..	45	0	0		
Balance due .. ..	£64	15	0		

2. The plaintiff's claim is against the defendant *A.B.* as principal, and against the defendant *C.D.* as surety, for the price of goods sold to *A.B.* The following are the particulars:—

1874—2nd February. Guarantee by *C.D.* of the price of woollen goods, to be supplied to *A.B.*

	£	s.	d.
2nd February—To goods .. ..	47	15	0
3rd March—To goods .. ..	105	14	0
17th March—To goods .. ..	14	12	0
5th April—To goods .. ..	34	0	0
	£202	1	0

3. The plaintiff's claim is against the defendant, as maker of a promissory note. The following are the particulars:—

Promissory note for 250*l.*, dated 1st January, 1874, made by defendant, payable four months after date.

Principal .. .. .	£250
Interest .. .. .	

4. The plaintiff's claim is against the defendant *A.B.* as acceptor, and against the defendant *C.D.* as drawer, of a bill of exchange. The following are the particulars:—

Bill of exchange for 500*l.*, dated 1st January, 1874, drawn by defendant *C.D.* upon and accepted by defendant *A.B.*, payable three months after date.

Principal .. .. .	£500
Interest .. .. .	

5. The plaintiff's claim is for principal and interest due upon a bond. The following are the particulars:—

Bond dated 1st January, 1873. Condition for payment of 100*l.* on the 26th December, 1873.

Principal due .. .. .	£50
Interest .. .. .	



6. The plaintiff's claim is for principal and interest due under a covenant. The following are the particulars:—

Deed dated	covenant to pay 100 <i>l.</i> and interest.			
Principal due	..	..	..	£80
Interest	..	..	..	..

SECTION VIII.

*Indorsements of Character of Parties.*

INDORSE-  
MENTS OF  
CHARACTER  
OF PARTIES.  
Executors.

The plaintiff's claim is as executor [*or administrator*] of *C.D.*, deceased, for, &c.

The plaintiff's claim is against the defendant *A.B.*, as executor [*or, &c.*] of *C.D.*, deceased, for, &c.

The plaintiff's claim is against the defendant *A.B.*, as executor of *X.Y.*; deceased, and against the defendant *C.D.*, in his personal capacity, for, &c.

The claim of the plaintiff *C.D.* is as executrix of *X.Y.*, deceased, and the claim of the plaintiff *A.B.* as her husband, for

By husband  
and wife,  
executrix.

The claim of the plaintiff is against the defendant *C.D.*, as executrix of the defendant *C.D.*, deceased, and against the defendant *A.B.*, as her husband, for

Against hus-  
band and  
wife, execu-  
trix.

The plaintiff's claim is as trustee under the bankruptcy of *A.B.*, for

Trustee in  
bankruptcy.

The plaintiff's claim is against the defendant as trustee under the bankruptcy of *A.B.*, for

The plaintiff's claim is as [*or the plaintiff's claim is against the defendant as*] trustee under the will of *A.B.* [*or under the settlement upon the marriage of A.B. and X.Y., his wife*].

Trustees.

The plaintiff's claim is as public officer of the Bank, for

Public officer.

The plaintiff's claim is against the defendant as public officer of the Bank, for

The plaintiff's claim is against the defendant *A.B.* as principal, and against the defendant *C.D.* as public officer of the Bank, as surety, for

The plaintiff's claim is against the defendant as heir-at-law of *A.B.*, deceased.

Heir and  
devisee.

The plaintiff's claim is against the defendant *C.D.* as heir-at-law, and against the defendant *E.F.* as devisee of lands under the will of *A.B.*

The plaintiff's claim is as well for the Queen as for himself, for

(o) Qui tam  
action.

(o) See Order iii., Rule 4, ante, p. 194.



## APPENDIX B.

## FORM I.

Notice to  
third party.

*Notice by Defendant to Third Party.*

187 . [Here put the letter and number.]  
Notice filed , 187 .

In the High Court.  
Queen's Bench Division.

Between *A.B.*, plaintiff,  
and  
*C.D.*, defendant.

To Mr. *X.Y.*

Take notice that this action has been brought by the plaintiff against the defendant [as surety for *M.N.*,] upon a bond conditioned for payment of 2000*l.* and interest to the plaintiff.

The defendant claims to be entitled to contribution from you to the extent of one-half of any sum which the plaintiff may recover against him, on the ground that you are [his co-surety under the said bond, or, also surety for the said *M.N.*, in respect of the said matter, under another bond made by you in favour of the said plaintiff, dated the day of , A.D. ].

Or [as acceptor of a bill of exchange for 500*l.*, dated the day of , A.D. , drawn by you before and accepted by the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation.].

Or [to recover damages for a breach of a contract for the sale and delivery to the plaintiff of 1000 tons of coal.

The defendant claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent.]

And take notice that, if you wish to dispute the plaintiff's claim in this action as against the defendant *C.D.*, you must cause an appearance to be entered for you within eight days after service of this notice.

In default of your so appearing, you will not be entitled in any future proceeding between the defendant *C.D.* and yourself to dispute



the validity of the judgment in this action, whether obtained by con- Notices.  
sent or otherwise.

(Signed) *E.T.*

Or,

*X.Y.*,

Solicitor for the defendant,

*E.T.*

Appearance to be entered at (p).

#### FORM 2.

187 . [*Here put the letter and number.*]

In the High Court.  
Queen's Bench Division.

Between *A.B.*, plaintiff,  
and  
*C.D.*, defendant.

The plaintiff confesses the defence stated in the paragraph of the  
defendant's statement of defence [*or*, of the defendant's further state-  
ment of defence] (*q*).

#### FORM 3.

187 . [*Here put the letter and number.*]

In the High Court of Justice.  
Division.

Between *A.B.*, plaintiff,  
and  
*C.D.*, defendant.

The particulars of the plaintiff's complaint herein, and of the relief  
and remedy to which he claims to be entitled, appear by the indorse-  
ment upon the writ of summons (*r*).

#### FORM 4.

"To the within-named *X.Y.*

"Take notice that if you do not appear to the within counter-claim  
"of the within-named *C.D.* within eight days from the service of this  
"defence and counter-claim upon you, you will be liable to have judg-  
"ment given against you in your absence.

"Appearances are to be entered at (*s*) ."

(p) See Order xvi., Rule 18, ante,  
p. 222.

(q) See Order xx., Rule 3, ante,  
p. 236.

(r) See Order xxi., Rule 4, ante,  
p. 238.

(s) See Order xxii., Rule 6, ante,  
p. 239.



## FORM 5.

Notices.

*Notice of Payment into Court.*

In the High Court of Justice.  
Q.B. Division.

1875. B. No.

*A.B. v. C.D.*

Take notice that the defendant has paid into Court £ , and  
says that that sum is enough to satisfy the plaintiff's claim [*or the  
plaintiff's claim for, &c.*] (t)

To Mr. X.Y.,

The Plaintiff's solicitor.

Z.,  
Defendant's solicitor.

## FORM 6.

*Acceptance of Sum paid into Court.*

In the High Court of Justice.  
Q.B. Division.

1875. B. No.

*A.B. v. C.D.*

Take notice that the plaintiff accepts the sum of £ paid by you  
into Court in satisfaction of the claim in respect of which it is paid  
in (u).

## FORM 7.

Form of in-  
terrogatories.*Form of Interrogatories.*

In the High Court of Justice.  
Division.

1874. B. No.

Between *A.B.*, plaintiff,  
and  
*C.D.*, *E.F.*, and *G.H.*, defendants.

Interrogatories on behalf of the above-named [*plaintiff*, or *defendant*,  
*C.D.*] for the examination of the above-named [*defendants E.F. and  
G.H.*, or *plaintiff*].

1. Did not, &amp;c.

2. Has not, &amp;c.

&amp;c. &amp;c. &amp;c.

[*The defendant E.F. is required to answer the interrogatories  
numbered .*]

[*The defendant G.H. is required to answer the interrogatories  
numbered ] (x).*

(t) See Order xxx., Rule 2, ante,  
p. 251.

(u) See Order xxx., Rule 4, ante,  
p. 252.

(x) See Order xxxi., Rule 3, ante, p. 253.



## FORM 8.

*Form of Answer to Interrogatories.*

In the High Court of Justice.  
Division.

1874. B. No.

Between *A.B.*, plaintiff,  
and

*C.D.*, *E.F.*, and *G.H.*, defendants.

The answer of the above-named defendant *E.F.* to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named *E.F.*, make oath and say as follows (*y*):—

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## FORM 9.

*Form of Affidavit as to Documents.*

In the High Court of Justice.  
Division.

1874. B. No.

Form of affidavit as to documents.

Between *A.B.*, plaintiff,  
and  
*C.D.*, defendant.

I, the above-named defendant *C.D.*, make oath and say as follows:—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the said first schedule hereto.

3. That [*here state upon what grounds the objection is made, and verify the facts as far as may be*].

4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

5. The last-mentioned documents were last in my possession or power on [*state when*].

6. That [*here state what has become of the last-mentioned documents, and in whose possession they now are*].

7. According to the best of my knowledge, information, and belief, I have not now, and never had in my possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, solicitor or agent, or in the possession, custody, or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or

(*y*) See Order xxxi., Rule 7, ante, p. 253.



extract from any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto (z).

---

FORM 10.

*Form of Notice to produce Documents.*

Form of  
notice to  
produce.

In the High Court of Justice.

Q.B. Division.

A.B. v. C.D.

Take notice that the [plaintiff or defendant] requires you to produce for his inspection the following documents referred to in your [statement of claim, or defence, or affidavit, dated the                      day of                      A.D.                      ]

*Describe documents required (a).*

X.Y.,

Solicitor to the

To Z.,

Solicitor for

---

FORM 11.

*Form of Notice to inspect Documents.*

To inspect.

In the High Court of Justice.

Q.B. Division.

A.B. v. C.D.

Take notice that you can inspect the documents mentioned in your notice of the                      day of                      A.D. [except the deed numbered in that notice] at my office on Thursday next, the                      instant, between the hours of 12 and 4 o'clock.

Or, that the [plaintiff or defendant] objects to giving you inspection of the documents mentioned in your notice of the                      day of                      A.D.                      , on the ground that [state the ground] (b).

---

FORM 12.

*Form of Notice to admit Documents.*

To admit.

In the High Court of Justice.

Division.

A.B. v. C.D.

Take notice that the plaintiff [or defendant] in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [or plaintiff], his solicitor

(z) See Order xxxi., Rule 13, ante, p. 254.

(a) See Order xxxi., Rule 15, ante, p. 255.

(b) See Order xxxi., Rule 16, ante, p. 255.



or agent, at , on , between the hours of ; and the Notices to  
defendant [*or plaintiff*] is hereby required, within forty-eight hours admit.  
from the last-mentioned hour, to admit that such of the said documents  
as are specified to be originals were respectively written, signed, or exe-  
cuted, as they purport respectively to have been; that such as are  
specified as copies are true copies; and such documents as are stated  
to have been served, sent, or delivered, were so served, sent, or de-  
livered respectively; saving all just exceptions to the admissibility of  
all such documents as evidence in this cause (c).

Dated, &c.  
To *E.F.*, solicitor [*or agent*] for defendant [*or plaintiff*].  
*G.H.*, solicitor [*or agent*] for plaintiff [*or defendant*].  
[*Here describe the documents, the manner of doing which may be as follows:—*

ORIGINALS.

Description of Documents.	Dates.
Deed of covenant between <i>A.B.</i> and <i>C.D.</i> first part, and <i>E.F.</i> second part .. .. .	January 1, 1848.
Indenture of lease from <i>A.B.</i> to <i>C.D.</i> .. .. .	February 1, 1848.
Indenture of release between <i>A.B.</i> , <i>C.D.</i> first part, &c.	February 2, 1848.
Letter—defendant to plaintiff .. .. .	March 1, 1848.
Policy of insurance on goods by ship " <i>Isabella</i> ," on voyage from Oporto to London .. .. .	December 3, 1847.
Memorandum of agreement between <i>C.D.</i> , captain of said ship, and <i>E.F.</i> .. .. .	January 1, 1848.
Bill of exchange for 100 <i>l.</i> at three months, drawn by <i>A.B.</i> on and accepted by <i>C.D.</i> , indorsed by <i>E.F.</i> and <i>G.H.</i> .. .. .	May 1, 1849.

COPIES.

Description of Documents.	Dates.	Original or Duplicate served, sent, or de- livered, when, how, and by whom.
Register of baptism of <i>A.B.</i> in the parish of <i>X.</i> .. .. .	January 1, 1848.	Sent by General Post, February 2, 1848. Served March 2, 1848, on defendant's attor- ney by <i>E.F.</i> of —
Letter—plaintiff to defendant ..	February 1, 1848.	
Notice to produce papers ..	March 1, 1848.	
Record of a judgment of the Court of Queen's Bench in an action, <i>J.S. v. J.N.</i> .. .. .	Trinity Term, 10th Vict.	
Letters Patent of King Charles II. in the Rolls Chapel .. .. .	January 1, 1680.	

(c) See Order xxxii., Rule 3, ante, p. 258.



## FORM 13.

Setting down  
special case.*Setting down Special Case (d).*

1875. B. No.

In the High Court of Justice.  
Division.Between *A.B.*, plaintiff,  
and*C.D.* and others, defendants.Set down for argument the special case filed in this action on the  
day of           , 187   .*X.Y.*, Solicitor for

## FORM 14.

Notice of  
trial.*Form of Notice of Trial (e).*In the High Court of Justice.  
Division.*A.B. v. C.D.*Take notice of trial of this action [*or of the issues in this action ordered  
to be tried*] by a judge and jury [*or as the case may be*] in Middlesex,  
[*or as the case may be*] for the            day of            next.*X.Y.*, plaintiff's solicitor [*or as the case may be*].

Dated

To *Z.*, defendant's solicitor [*or as the case may be*].

## FORM 15.

Certificate.

*Form of Certificate of Officer after Trial by a Jury (f).*

30th November, 1876.

1876. No.

In the High Court of Justice.  
Division.Between *A.B.*, plaintiff,  
and*C.D.*, defendant.I certify that this action was tried before the Honourable Mr. Justice  
and a special jury of the county of            on the 12th and 13th  
days of November, 1876.The jury found [*state findings*].The judge directed that judgment should be entered for the plaintiff  
for            *l.* with costs of summons [*or as the case may be*].*A.B.*,

[Title of officer.]

(d) See Order xxxiv., Rule 5, ante,  
p. 260.(e) See Order xxxvi., Rule 8, ante,  
p. 266.

(f) See Order xxxvi., Rule 24, ante, p. 268.



## FORM 16.

*Affidavit of Scripts (g).*Affidavit of  
scripts.

In the High Court of Justice.

Probate Division.

Between *A.B.* .. .. Plaintiff,  
and*C.D.* .. .. Defendant.

I, *A.B.*, of , in the county of , party in this cause, make oath and say, that no paper or parchment writing, being or purporting to be or having the form or effect of a will or codicil or other testamentary disposition of *E.F.*, late of , in the county of , deceased, the deceased in this cause, or being or purporting to be instructions for, or the draft of, any will, codicil, or testamentary disposition of the said *E.F.*, has at any time, either before or since his death, come to the hands, possession, or knowledge of me, this deponent, or to the hands, possession, or knowledge of my solicitors in this suit, so far as is known to me, this deponent, save and except the true and original last will and testament of the said deceased now remaining in the principal registry of this Court [*or hereunto annexed, or as the case may be*], the said will bearing date the day of , 18 [*or as the case may be*], also save and except [*here add the dates and particulars of any other testamentary papers of which the deponent has any knowledge*].

(Signed) *A.B.*

Sworn at on the day of , 18 .

Before me,

[*Person authorised to administer oaths under the Act.*]

## APPENDIX C.

PLEAD-  
INGS.

No. 1.

187 . B. No.

ACCOUNT  
STATED.

In the High Court of Justice.

Division.

Writ issued 3rd August, 1875.

Between *A.B.* .. .. Plaintiff,  
and*E.F.* .. .. Defendant.*Statement of Claim.*

1. Between the 1st of January and the 28th of February, 1875, the Claim.

(g) See Order xxi., Rule 2, ante, p. 237.







1. To have the real and personal estate of *A.B.* administered in this Court, and for that purpose to have all proper directions given and accounts taken: Administration of estates.
2. To have a receiver appointed of the rents of his real estate.
3. Such further or other relief as the nature of the case may require.

[1876. B. No. 233.]

In the High Court of Justice.

Chancery Division.

[*Name of Judge.*]In the matter of the estate of *A.B.*, deceased.

Between *E.F.* .. .. Plaintiff,  
and

*G.H.* .. .. Defendant.

*Statement of Defence.*

1. The plaintiff is an illegitimate child of *M.N.* She was never married. Defence.

2. The intestate was not entitled to any real estate at his death, except a copyhold estate situate in the county of *R.*, and held of the manor of *S.* According to the custom of that manor, when the copyholder dies without issue, and without leaving a brother, or issue of a deceased brother, the copyhold descends to his elder sister and her issue in preference to his younger sister and her issue. *P.Q.* was older than *M.N.*

3. The personal estate of *A.B.* was not sufficient for the payment of his debts, and has all been applied in payment of his funeral and testamentary expenses, and part of his debts.

[1876. B. No. 233.]

In the High Court of Justice.

Chancery Division.

[*Name of Judge.*]In the matter of the estate of *A.B.*, deceased.

Between *E.F.* .. .. Plaintiff,  
and

*G.H.* .. .. Defendant.

*Reply.*

The plaintiff joins issue with the defendant upon his defence.

Reply.



Administra-  
tion of  
estates.

No. 3.

[1876. B. No. 234.]

In the High Court of Justice.  
Chancery Division.  
[Name of Judge.]

Writ issued 22nd December, 1876.

In the matter of the estate of *A.B.*, deceased.  
Between *E.F.* .. .. Plaintiff,  
and  
*G.H.* .. .. Defendant.

Claim.

1. *A.B.* of *K.*, in the county of *L.*, duly made his last will, dated the 1st day of March, 1873, whereby he appointed the defendant and *M.N.* (who died in the testator's lifetime) executors thereof, and devised and bequeathed his real and personal estate to and to the use of his executors in trust, to pay the rents and income thereof to the plaintiff for his life; and after his decease, and in default of his having a son who should attain 21, or a daughter who should attain that age, or marry, upon trust as to his real estate for the person who would be the testator's heir-at-law, and as to his personal estate for the persons who would be the testator's next of kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.
2. The testator died on the 1st day of July, 1873, and his will was proved by the defendant on the 4th of October, 1873. The plaintiff has not been married.
3. The testator was at his death entitled to real and personal estate; the defendant entered into the receipt of the rents of the real estate and got in the personal estate; he has sold some part of the real estate.
- The plaintiff claims—
1. To have the real and personal estate of *A.B.* administered in this court, and for that purpose to have all proper directions given and accounts taken.
2. Such further or other relief as the nature of the case may require.

[1876. B. No. 234.]

In the High Court of Justice.  
Chancery Division.  
[Name of Judge.]

In the matter of the estate of *A.B.*, deceased.  
Between *E.F.* .. .. Plaintiff,  
and  
*G.H.* .. .. Defendant.

Statement of Defence.

Defence.

1. *A.B.*'s will contained a charge of debts; he died insolvent; he was entitled at his death to some real estate which the defendant sold,



and which produced the net sum of 4300*l.*, and the testator had some personal estate which the defendant got in and which produced the net sum of 1204*l.* The defendant applied the whole of the said sums and the sum of 84*l.* which the defendant received from rents of the real estate in the payment of the funeral and testamentary expenses and some of the debts of the testator. The defendant made up his accounts and sent a copy thereof to the plaintiff on the 10th of January, 1875, and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer. The defendant submits that the plaintiff ought to pay the costs of this action.

Administra-  
tion of  
estates.

[1876. B. No. 234.]

In the High Court of Justice.

Chancery Division.

[*Name of Judge.*]

In the matter of the estate of *A.B.*, deceased.

Between *E.F.* .. .. Plaintiff,

and

*G.H.* .. .. Defendant.

*Reply.*

The plaintiff joins issue with the defendant upon his defence.

*Reply.*

No. 4.

[1876. B. No. 235.]

In the High Court of Justice.

Chancery Division.

[*Name of Judge.*]

In the matter of the estate of *W.H.*, deceased.

Writ issued 22nd December, 1876.

Between *A.B.* and *C.* his wife .. .. Plaintiffs,

and

*E.F.* and *G.H.* .. .. Defendants.

*Statement of Claim.*

1. *W. H.*, of *H.*, in the county of *L.*, duly made his last will, dated the 19th day of March, 1861, whereby he appointed the defendants the executors thereof, and bequeathed to them all his personal estate in trust, to call in, sell, and convert the same into money, and thereout to pay his debts and funeral and testamentary expenses, and to divide the ultimate surplus into three shares, and to pay one of such three shares to each of his two children, *T. H.*, and *E.*, the wife of *E. W.*, and to stand possessed of the remaining third share upon trust for the children of the testator's son *J. H.* in equal shares, to be divided among them



Administra-  
tion of  
estates.

when the youngest of such children should attain the age of 21 years. And the testator devised his real estates to the defendants upon trust until the youngest child of the said J. H. should attain the age of 21 years, to pay one third part of the rents thereof to the said T. H., and one other third part thereof to the said E. W., and to accumulate the remaining third part by way of compound interest, and so soon as the youngest child of the said J. H. should attain the age of 21 years, to sell the said real estates, and out of the proceeds of such sale to pay the sum of 1,000*l.* to the said T. H., and to invest one moiety of the residue in manner therein mentioned, and stand possessed thereof in trust to pay the income thereof to the said E., the wife of the said E. W., during her life for her separate use, and after her death for her children, the interests of such children being contingent on their attaining the age of 21 years, and to divide the other moiety of such proceeds of sale and the accumulations of the third share of rents thereinbefore directed to be accumulated among such of the children of the said J. H. as should be then living, and the issue of such of them as should be then dead, in equal shares per stirpes.

2. The testator died on the 25th day of April, 1873, and his said will was proved by the defendants in the month of June, 1873.

3. The testator died possessed of one third share in a leasehold colliery called the Paradise Colliery, and in the engines, machinery, stock in trade, book debts, and effects belonging thereto. He was also entitled to real estate, and other personal estate.

4. The testator left T. H. and E., the wife of E. W., him surviving. J. H. had died in the testator's lifetime, leaving four children, and no more. The plaintiff *C.B.* is the youngest of the children of J. H., and attained the age of 21 years on the 1st of June, 1871. The other three children of J. H. died without issue in the lifetime of the testator.

5. E. W. has several children, but no child has attained the age of 21 years.

6. T. H. is the testator's heir-at-law.

7. The defendants have not called in, sold, and converted into money the whole of the testator's personal estate, but have allowed a considerable part thereof to remain outstanding; and in particular the defendants have not called in, sold, or converted into money the testator's interest in the said colliery, but have, from the death of the testator to the present time, continued to work the same in partnership with the other persons interested therein. The estate of the testator has sustained considerable loss by reason of such interest not having been called in, sold, or converted into money.

8. The defendants did not upon the death of the testator sell the testator's furniture, plate, linen, and china, but allowed the testator's widow to possess herself of a great part thereof, without accounting for the same, and the same has thereby been lost to the testator's estate.



9. The defendants have not invested the share of the testator's residuary personal estate given by his will to the children of the testator's son J. H., and have not accumulated one third of the rents and profits of his real estate as directed by the said will, but have mixed the same share and rents with their own moneys, and employed them in business on their own account.

Administra-  
tion of  
estates.

10. The defendants have sold part of the real estates of the testator, but a considerable part thereof remains unsold.

11. A receiver ought to be appointed of the outstanding personal estate of the testator, and the rents and profits of his real estate remaining unsold.

The plaintiffs claim:—

1. That the estate of the said testator may be administered, and the trusts of his will carried into execution under the direction of the court.
2. That it may be declared that the defendants, by carrying on the business of the said colliery instead of realising the same, have committed a breach of trust, and that the parties interested in the testator's estate are entitled to the value of the testator's interest in the said partnership property as it stood at the testator's death, with interest thereon, or at their election to the profits which have been made by the defendants in respect thereof since the testator's death, whichever shall be found most for their benefit.
3. That an account may be taken of the interest of the testator in the said colliery, and in the machinery, book debts, stock, and effects belonging thereto, according to the value thereof at the testator's death, and an account of all sums of money received by or by the order, or for the use of the defendants, or either of them, on account of the testator's interest in the said colliery, and that the defendants may be ordered to make good to the estate of the testator the loss arising from their not having realised the interest of the testator in the said colliery within a reasonable time after his decease.
4. That an account may be taken of all other personal estate of the testator come to the hands of the defendants, or either of them, or to the hands of any other person by their or either of their order, or for their or either of their use, or which, but for their wilful neglect or default, might have been so received; and an account of the rents and profits of the testator's real estates, and the moneys arising from the sale thereof, possessed or received by or by the order, and for the use of the defendants, or either of them.
5. That the real estate of the testator remaining unsold may be sold under the direction of the court.
6. That the defendants may be decreed, at the election of the



Administra-  
tion of  
estates.

parties interested in the testator's estate, either to pay interest at the rate of 5% per cent. per annum upon such moneys belonging to the estate of the testator as they have improperly mixed with their own moneys and employed in business on their own account, and that half-yearly rests may be made in taking such account as respects all moneys which by the said will were directed to be accumulated, or to account for all profits by the employment in their business of the said trust money.

7. That a receiver may be appointed of the outstanding personal estate of the testator, and to receive the rents and profits of his real estate remaining unsold.
8. Such further or other relief as the nature of the case may require.

[1876. B. 235.]

In the High Court of Justice.

Chancery Division.

[*Name of Judge.*]

Between *A.B.* and *C.* his wife .. .. Plaintiffs,  
and  
*E.F.* and *G.H.* .. .. Defendants.

*Statement of Defence of the above-named Defendants.*

Defence.

1. Shortly after the decease of the testator, the defendants, as his executors, possessed themselves of and converted into money the testator's personal estate, except his share in the colliery mentioned in the plaintiff's statement of claim. The moneys so arising were applied in payment of part of the testator's debts and funeral and testamentary expenses, but such moneys were not sufficient for the payment thereof in full.

2. The Paradise Colliery was, at the testator's decease, worked by him in partnership with *J. Y.*, and *W. Y.*, and *T. Y.*, both since deceased. No written articles of partnership had been entered into, and for many years the testator had not taken any part in the management of the said colliery, but it was managed exclusively by the other partners, and the defendants did not know with certainty to what share therein the testator was entitled.

3. Upon the death of the testator, the defendants endeavoured to ascertain the value of the testator's share in the colliery, but the other partners refused to give them any information. The defendants thereupon had the books of the colliery examined by a competent accountant, but they had been so carelessly kept that it was impossible to obtain from them any accurate information respecting the state of the concern; it was, however, ascertained that a considerable sum was due to the testator's estate.



4. Between the death of the testator and the beginning of the year 1874 the defendants made frequent applications to J. Y., W. Y., and T. Y. for a settlement of the accounts of the colliery. Such applications having proved fruitless, the defendants, in January, 1874, filed their bill of complaint in the Court of Chancery against J. Y., W. Y., and T. Y., praying for an account of the partnership dealings between the testator and the defendants thereto, and that the partnership might be wound up under the direction of the Court.

Administra-  
tion of  
estates.

5. The said T. Y. died in the year 1874, and the suit was revived against J. P. and T. S., his executors. The suit is still pending.

6. As to the Paradise Colliery, the defendants have acted to the best of their judgment for the benefit of the testator's estate, and they deny being under any liability in respect of the said colliery not having been realised. They submit to act under the direction of the Court as to the further prosecution of the said suit and generally as to the realisation of the testator's interest in the said colliery.

7. With respect to the statements in the eighth paragraph of the statement of claim, the defendants say, that upon the death of the testator, they sold the whole of his furniture, linen, and china, and also all his plate, except a few silver teaspoons of very small value, which were taken possession of by his widow, and they applied the proceeds of such sale as part of the testator's personal estate, and they deny being under any liability in respect of such furniture, linen, china, and plate.

8. With respect to the statements in paragraph seven of the statement of claim, the defendants say that all moneys received by them, or either of them, on account of the testator's estate, were paid by them to their executorship account at the bank of Messrs. H. & Co., and until the sale of the testator's real estate took place as hereinafter mentioned, the balance to their credit was never greater than was necessary for the administration of the trusts of the testator's will, and they therefore were unable to make any such investment or accumulation as directed by the testator's will. No moneys belonging to the testator's estate have ever been mixed with the moneys of the defendants, or either of them, nor has any money of the testator's been employed in business since the testator's decease, except that his share in the said colliery, for the reason hereinbefore appearing, has not been got in.

9. In 1874, after the plaintiff C.B. had attained her age of 21 years the defendants sold the real estate of the testator for sums amounting to 15,080*l.*, and no part thereof remains unsold. They received the purchase-moneys in December, 1874, and on the day of 1875, they paid such proceeds into Court to the credit of this action with the exception of 500*l.* retained on account of costs incurred and to be incurred by them.



[1876. B. No. 235.]

In the High Court of Justice.

Chancery Division.

[Name of Judge.]

Between *A.B.* and *C.* his wife .. .. Plaintiffs,  
 and  
*E.F.* and *G.H.* .. .. Defendants.

*Reply.*

The plaintiff joins issue with the defendants upon their defence.

No. 5.

187 . B. No.

AGENT.

In the High Court of Justice.

Division.

Writ issued 3rd August, 1875.

Between *A.B.* and Company .. .. Plaintiffs,  
 and  
*E.F.* and Company .. .. Defendants.

*Statement of Claim.*

Claim.

1. The plaintiffs are manufacturers of artificial manures, carrying on business at , in the county of .

2. The defendants are commission agents, carrying on business in London.

3. In the early part of the year , the plaintiffs commenced, and down to the 187 , continued to consign to the defendants, as their agents, large quantities of their manures for sale, and the defendants sold the same, and received the price thereof and accounted to the plaintiffs therefor.

4. No express agreement has ever been entered into between the plaintiffs and the defendants with respect to the terms of the defendants' employment as agents. The defendants have always charged the plaintiffs a commission at per cent. on all sales effected by them, which is the rate of commission ordinarily charged by del credere agents in the said trade. And the defendants, in fact, always accounted to the plaintiffs for the price, whether they received the same from the purchasers or not.

5. The plaintiffs contend that the defendants are liable to them as del credere agents, but if not so liable are under the circumstances hereinafter mentioned liable as ordinary agents.

6. On the , the plaintiffs consigned to the defendants for sale a large quantity of goods, including tons of .

7. On or about the , the defendants sold tons of part of such goods to one *G.H.* for £., at three months' credit, and delivered the same to him.



8. *G.H.* was not, at that time, in good credit and was in insolvent Agent. circumstances, and the defendants might, by ordinary care and diligence, have ascertained the fact.

9. *G.H.* did not pay for the said goods, but before the expiration of the said three months for which credit had been given was adjudicated a bankrupt, and the plaintiffs have never received the said sum of £., or any part thereof.

The plaintiffs claim :—

1. Damages to the amount of £.
2. Such further or other relief as the nature of the case may require.

The plaintiffs propose that this action should be tried in the county of .

[Title as in claim, omitting date of issue of writ.]

*Statement of Defence.*

1. The defendants deny that the said commission of per cent. Defence mentioned in paragraph 4 of the claim is the rate of commission ordinarily charged by del credere agents in the said trade, and say that the same is the ordinary commission for agents other than del credere agents, and they deny that they ever accounted to the plaintiffs for the price of any goods, except after they had received the same from the purchasers.

2. The defendants deny that they were ever liable to the plaintiffs as del credere agents.

3. With respect to the eighth paragraph of the plaintiff's statement of claim, the defendants say that at the time of the said sale to the said *G.H.*, the said *G.H.* was a person in good credit. If it be true that the said *G.H.* was then in insolvent circumstances (which the defendants do not admit), the defendants did not and had no reason to suspect the same, and could not by ordinary care or diligence have ascertained the fact.

[Title as in defence.]

*Reply.*

The plaintiffs join issue upon the defendant's statement of defence. Reply.

No. 6.

187 . B. No.

In the High Court of Justice.

Division.

Writ issued 3rd August, 1876.

Between *A.B.* and *C.D.* .. .. Plaintiffs,

and

*E.F.* and *G.H.* .. .. Defendants.

BILL OF  
EXCHANGE.



*Statement of Claim.*

Claim.

1. Messrs. *M.N. & Co.* on the            day of            drew a bill of exchange upon the defendants for            £. payable to the order of the said Messrs. *M.N. & Co.* three months after date, and the defendants accepted the same.

2. Messrs. *M.N. & Co.* indorsed the bill to the plaintiffs.

3. The bill became due on the            , and the defendants have not paid it.

The plaintiffs claim :—

[Title.]

*Statement of Defence.*

Defence.

1. The bill of exchange mentioned in the statement of claim was drawn and accepted under the circumstances hereinafter stated, and except as hereinafter mentioned there never was any consideration for the acceptance or payment thereof by the defendants.

2. Shortly before the acceptance of the said bill it was agreed between the said Messrs. *M.N. & Co.*, the drawers thereof, and the defendants, that the said Messrs. *M.N. & Co.* should sell and deliver to the defendants free on board ship at the port of            1200 tons of coals during the month of            , and that the defendants should pay for the same by accepting the said Messrs. *M.N. & Co.*'s draft for            £. at six months.

3. The said Messrs. *M.N. & Co.* accordingly drew upon the defendants, and the defendants accepted the bill of exchange now sued upon.

4. The defendants did all things which were necessary to entitle them to delivery by the said Messrs. *M.N. & Co.* of the said 1200 tons of coals under their said contract, and the time for delivery has long since elapsed; but the said Messrs. *M.N. & Co.* never delivered the same, or any part thereof, but have always refused to do so, whereby the consideration for the defendants' acceptance has wholly failed.

5. The plaintiffs first received the said bill, and it was first indorsed to them after it was overdue.

6. The plaintiffs never gave any value or consideration for the said bill.

7. The plaintiffs took the said bill with notice of the facts stated in the second, third, and fourth paragraphs hereof.

[Title.]

*Reply.*

Reply.

1. The plaintiff joins issue upon the defendants' statement of defence.

2. The plaintiff gave value and consideration for the said bill in manner following, that is to say, on the            day of            187    , the said Messrs. *M.N. & Co.* were indebted to the plaintiff in about            £.,



the balance of an account for goods sold from time to time by him to them. On that day they ordered of the plaintiff further goods to the value of about £., which last-mentioned goods have since been delivered by him to them. And at the time of the order for such last-mentioned goods it was agreed between Messrs. *M.N. & Co.* and the plaintiff, and the order was received upon the terms, that they should indorse and hand over to him the bill of exchange sued upon, together with various other securities on account of the said previous balance, and the price of the goods so ordered on that day. The said securities, including the bill sued upon, were thereupon on the same day indorsed and handed over to the plaintiff.

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No. 7.

187 . B. No.

In the High Court of Justice.  
Division.

BILL OF  
EXCHANGE  
AND CON-  
SIDERATION.

Writ issued 3rd August, 1876.

Between *A.B.* and *C.D.* .. .. Plaintiffs,  
and  
*E.F.* and *G.H.* .. .. Defendants.

*Statement of Claim.*

1. The plaintiffs are merchants, factors, and commission agents, Claim. carrying on business in London.

2. The defendants are merchants and commission agents, carrying on business at Hong Kong.

3. For several years prior to the 1875, the plaintiffs had been in the habit of consigning goods to the defendants for sale, as their agents, and the defendants had been in the habit of consigning goods to the plaintiffs for sale, as their agents; and each party always received the price of the goods sold by him for the other; and a balance was from time to time struck between the parties, and paid.

On the of , the moneys so received by the defendants for the plaintiffs, and remaining in their names, largely exceeded the moneys received by the plaintiffs for the defendants, and a balance of £. was accordingly due to the plaintiffs from the defendants.

4. On or about the 1875, the plaintiffs sent to the defendants a statement of the accounts between them, shewing the said sum as the balance due to the plaintiffs from the defendants; and the defendants agreed to the said statement of accounts as correct, and to the said sum of £. as the balance due by them to the plaintiffs, and agreed to pay interest on such balance if time were given to them.

5. The defendants requested the plaintiffs to give them three months time for payment of the said sum of £., and the plaintiffs agreed to do so upon the defendants accepting the bills of exchange hereinafter mentioned.







“ risk of boats so far as ships are liable thereto excepted), unto Bills of Lading.  
 “ order or to assigns paying freight for the said goods at the rate  
 “ of (19s.) say nineteen shillings sterling in full per ton of 20 cwt.  
 “ delivered with £10 gratuity. Other conditions as per charter-  
 “ party, dated London, 4th October, 1872, with primage and  
 “ average accustomed. In witness whereof the master or purser  
 “ of the said ship hath affirmed to three bills of lading all of this  
 “ tenor and date, the one of which three bills being accomplished  
 “ the other two to stand void. Dated in Port Said (Egypt), 6th  
 “ February, 1873. 100 dunnage mats. Fifteen working days  
 “ remain for discharging.”

4. The persons constituting the firm of Messrs. L. and Company are identical with the members of the plaintiffs' firm.

5. The vessel sailed on her voyage to Hull, and duly arrived there on or about the 7th of May, 1873.

6. The cotton seed was delivered to the plaintiffs, but not in as good order and condition as it was in when shipped at Port Said; but was delivered to the plaintiffs greatly damaged.

7. The deterioration of the cotton seed was not occasioned by any of the perils or causes in the bills of lading excepted.

8. By reason of the premises the plaintiffs lost a great part of the value of the said cotton seed, and were put to great expense in and about keeping, warehousing, and improving the condition of the said cotton seed, and in and about having the same surveyed.

The plaintiffs claim the following relief:—

1. £. for damages, [(1) and the condemnation of the said vessel, and the defendant and his bail in the same]:
2. Such further relief as the nature of the case requires.

[Title.]

*Defence.*

Statement of:—

Defence.

1. They deny the truth of the allegations contained in the sixth, seventh, and eighth articles of the said petition.

2. The deterioration, if any, to the cotton seed was occasioned by the character and quality of the cotton seed when shipped on board the “Ida,” and by the inherent qualities of the cotton seed, and by shipping water in a severe storm which occurred on the       day of       , in latitude       during the voyage, or by some or one of such causes.

[Title.]

*Reply.*

The plaintiffs join issue upon the statement of defence.

Reply.

(1) This may be inserted if the action be an Admiralty action in rem.



No. 9.

187 . B. No.

BOTTOMRY. In the High Court of Justice.  
Admiralty Division.

Writ issued [        ].  
THE "ONWARD."

Between *A.B.* and *C.D.* .. .. Plaintiffs,  
and  
*E.F.* and *G.H.* .. .. Defendants.

*Statement of Claim.*

Claim. •

1. The "Onward," a ship of 933 tons register, or thereabouts, belonging to the United States of America, whilst on a voyage from Moulmein to Queenstown or Falmouth, for orders, and from thence to a port of discharge in the United Kingdom or on the Continent, between Bordeaux and Hamburg, both ports inclusive, laden with a cargo of teak timber, was compelled to put into Port Louis, in the island of Mauritius, in order to repair and refit.

2. The master of the "Onward," being without funds or credit at Port Louis, and being unable to pay the expense of the said repairs, and the necessary disbursements of the said ship at Port Louis, so as to enable the said ship to resume and prosecute her voyage, and after having communicated with his owners and with the owners and consignees of the cargo, was compelled to resort to a loan of 24,369 dollars on bottomry of the said ship, her cargo and freight, for the purpose of enabling him to pay the said expenses and disbursements, which sum Messrs. H. and Company, of Port Louis, at the request of the master by public advertisement, advanced to the said master at and after the rate of 128 dollars for every 100 dollars advanced, and accordingly the said master, by a bond of bottomry, dated the 13th of October, 1870, by him duly executed in consideration of the sum of 24,369 dollars, Mauritius currency, paid to him by the said Messrs. H. and Company, bound himself and the said ship and her cargo, namely, about 940 tons of teak timber, and her freight, to pay unto Messrs. H. and Company, their assigns, or order or indorsees, the said sum of 24,369 dollars with the aforesaid maritime premium thereon, within twenty days next after the arrival of the "Onward" at her port of discharge, from the said intended voyage, the said payment to be made both in capital and interest in British sterling money, at and after the rate of 4s., for every dollar, with a condition, that in case the said ship and cargo should be lost, during her voyage from Port Louis to Queenstown or Falmouth, for orders, and thence to her port of discharge in the United Kingdom or on the Continent between Bordeaux and Hamburg, both ports inclusive, then, that the said sum of 24,369 dollars, and maritime premium thereon, should not be recoverable.



3. The “Onward” subsequently proceeded on her voyage, and on the 7th of February, 1871, arrived with her cargo on board at the port of Liverpool, which was her port of discharge.

4. The bond was duly indorsed and assigned to the plaintiffs.

5. The ship has been sold by order of the Court, and the proceeds of the sale thereof have been brought into Court, and the freight has also been paid into Court.

6. The said sum of 24,369 dollars, with the maritime premium thereon, still remain due to the plaintiffs. By a decree made on the 10th of May, 1871, the Court pronounced for the validity of the bond, so far as regarded the ship and freight, and condemned the proceeds of the ship and freight in the amount due on the bond. The principal and premium still remain owing to the plaintiffs, and the proceeds of the said ship and her freight available for payment thereof are insufficient for such payment.

The plaintiffs claim:—

1. That the Court pronounce for the validity of the bond so far as regards the cargo:
2. That the Court condemn the defendants and their bail in so much of the amount due to the plaintiffs on the bond, for principal, maritime premium, and for interest from the time when such principal and premium ought to have been paid, as the proceeds of the ship and freight available for payment of the bond shall be insufficient to satisfy, and in costs:
3. Such further relief as the nature of the case requires.

[Title.]

*Defence.*

The defendants say that the—

1. Several averments in the second article of the statement contained are respectively untrue, except the averment that the bottomry bond therein mentioned was given and executed. Defence.

2. The “Onward” proceeded on the voyage in the first paragraph of the claim mentioned, under a charter-party made between the defendants and the owners of the vessel, who resided at New York. And the cargo in the said paragraph mentioned belonged to the defendants, and was shipped at Moulmein, by Messieurs T., F., and Company, of Moulmein, consigned to the defendants.

3. When the “Onward” put into Port Louis, the master placed his ship in the hands of Messieurs H. and Company, the persons in the second paragraph of the claim mentioned, and the repairs and disbursements in the said second article mentioned were made, directed, and expended under the orders, management, and on the credit of said Messieurs H. and Company, who at the outset contemplated the necessity of securing themselves by the hypothecation of the ship, freight and cargo.

4. The master of the “Onward” and Messieurs H. and Company did



**Bottomry.** not communicate to the said shippers of the cargo, or to the defendants who carried on business at Glasgow, as the master knew the intention of hypothecating the ship, freight and cargo, or the circumstances which might render such hypothecation advisable or necessary, but on the contrary, without reasonable cause or excuse, abstained from so doing, although the comparatively small value of the ship and freight to be earned, rendered it all the more important that such communication should have been made.

5. A reasonable and proper time was not allowed to elapse between the advertisements for the bottomry loan, and the acceptance of Messieurs H. and Company's offer to make such loan.

[Title.]

*Reply.*

**Reply.** 1. The plaintiffs say that the defendants, since the 31st day of December, 1868, have been the only persons forming the firm of T., F., and Co., of Moulmein, mentioned in the third paragraph of the defence.

2. After the master of the "Onward" put into Port Louis as aforesaid, he employed Messieurs H. and Company, in the claim mentioned, as his agents, and by his directions they by letter communicated to the defendants' firms at Moulmein and Glasgow the circumstances of the ship's distress, and the estimated amount of her repairs.

3. The said Messieurs H. and Company shortly after the said ship was put into their hands at Port Louis, offered the said master, in case he should require them to do so, to make the necessary advances for the ship's repairs, and to take his draft at 90 days' sight on Messrs. B. Brothers, of London, at the rate of 5 per cent. discount for the amount of the advances, together with a bottomry bond on ship, cargo, and freight as collateral security, the bond to be void should the draft be accepted. The said master, and the said Messieurs H. and Company, by letter, communicated to the owners of the "Onward" the circumstances of the said ship's distress, and the aforesaid offer of the said Messrs. H. and Company, and the said master by his letter requested the said owners to give him their directions on the subject. The said owners shortly after receiving such letters, by letter communicated with the defendants at Glasgow, and forwarded to them copies of the said lastly-mentioned letters of the said master, and of the said Messrs. H. and Co.

4. The defendants' houses at Moulmein and Glasgow respectively received the letters referred to in the second paragraph of this reply in time to have communicated with the said master at Port Louis before the giving of the said bottomry bond.

5. The defendants received the said copies of letters referred to in paragraph 4 of this reply, in time for them to have communicated



thereon with the said master at Port Louis before the giving of the said Bottomry bond.

6. The defendants did not at any time answer the said communications of the said Messrs. H. and Company, or in any way communicate or attempt to communicate with the said master, or to direct him not to give, or to prevent him from giving the said bottomry bond on the said cargo.

7. The said bond was duly advertised for sale, and was subsequently, and after a proper interval had elapsed, sold by auction in the usual way. There were several bidders at the sale, and the said Messrs. H. and Company were the lowest bidders in premium, and the said bond was knocked down to them. The said bond was not advertised for until the said ship was ready for sea, and up to that time the master of the said ship had expected to hear from her owners, and had hoped to be put in funds, and had not finally determined to resort to bottomry of the said ship, or her cargo or freight.

8. Save as herein appears the plaintiffs deny the truth of the several allegations contained in the said answer.

[NOTE.—The facts stated in this reply should, in general, be introduced by amendment into the statement of claim.]

[Title.]

*Rejoinder.*

The defendants join issue upon the plaintiffs' reply.

Rejoinder.

No. 10.

187 . B. No.

In the High Court of Justice.  
Division.

CHARTER-  
PARTY.

Writ issued 3rd August, 1876.

Between *A.B.* and *O.D.* .. .. Plaintiffs,  
and  
*E.F.* and *G.H.* .. .. Defendants.

*Statement of Claim.*

1. The plaintiffs were, on the 1st August, 1874, the owners of the Claim steamship "British Queen."

2. On the 1st of August, 1874, the ship being then in Calcutta, a charter-party was there entered into between John Smith, the master, on behalf of himself and the owners of the said ship, of the one part, and the defendants of the other part.

3. By the said charter-party it was agreed, amongst other things, that the defendants should be entitled to the whole carrying power of the said steamship for the period of four months certain, commencing from the said 1st August, 1874, upon a voyage or voyages between



Charter-party.

Calcutta and Mauritius and back ; that the defendants should pay for such use of the said steamship to the plaintiffs' agents at Calcutta, monthly, the sum of 1000*l.* ; that the charter should terminate at Calcutta ; and that if at the expiration of the said period of four months the said steamship should be upon a voyage, then the defendants should pay pro rata for the hire of the ship up to her arrival at Calcutta, and the complete discharge of her cargo there.

4. The "British Queen" made several voyages in pursuance of the said charter-party, and the first three monthly sums of 1000*l.* each were duly paid.

5. The period of four months expired on the 1st of December, 1874, and at that time the steamship was on a voyage from Mauritius to Calcutta. She arrived at Calcutta on the 13th December, and the discharge of her cargo there was completed on the 16th December, 1874.

6. The plaintiffs' agents at Calcutta called upon the defendants to pay to them the fourth monthly sum of 1000*l.*, and a sum of 500*l.* for the hire of the steamship from the 1st to the 16th December, 1874, but the defendants have not paid any part of the said sums.

The plaintiffs claim—

The sum of 1500*l.*, and interest upon 1000*l.*, part thereof, from the 1st December, 1874, until judgment.

The plaintiffs propose that this action should be tried in London.

[Title.]

*Statement of Defence.*

Defence.

1. By the charter-party sued upon it was expressly provided that if any accident should happen to, or any repairs should become necessary to the engines or boilers of the said steamship, the time occupied in repairs should be deducted from the period of the said charter, and a proportionate reduction in the charter money should be made.

2. On the                repairs became necessary to the engines and boilers of the steamship, and ten days were occupied in effecting such repairs.

3. On the                an accident happened to the engines of the steamship at Mauritius, and two days were occupied in effecting the repairs necessary in consequence thereof.

4. The defendants are therefore entitled to a reduction in the charter money of 400*l.*

Counter-claim.

By way of set-off and counter-claim the defendants claim as follows :—

5. By the charter-party it was expressly provided that the charterers should furnish funds for the steamship's necessary disbursements, except in the port of Calcutta, without any commission or interest on any sum so advanced.

6. The defendants paid for the necessary disbursements of the ship in the port of Mauritius between the                and the                1874, sums amounting in all to 625*l.* 14*s.* 6*d.*



7. The charter-party also contained an express warranty that the steamship was at the date thereof capable of steaming nine knots an hour on a consumption of 30 tons of coal a day, and it was further provided by the charter-party that the charterers should provide coal for the use of the said steamship.

8. The steamship was at the date of the charter-party only capable of steaming less than eight knots to an hour, and that only on a consumption of more than 35 tons of coal a day.

9. In consequence of the matters mentioned in the last paragraph, the steamship finally arrived at Calcutta at least 15 days later, and remained under charter at least 15 days longer than she would otherwise have done. She was also during the whole period of the said charter at sea for a much larger number of days than she would otherwise have been, and consumed a much larger quantity of coal on each of such days than she would otherwise have done, whereby the defendants were obliged to provide for the use of the steamship much larger quantities of coal than they would otherwise have been.

The defendants claim—

1. damages in respect of the matters stated in this set-off and counter-claim.

[Title.]

*Reply.*

1. The plaintiff joins issue upon the second, third, and fourth paragraphs of the defendant's statement of defence.

2. With respect to the alleged set-off stated in paragraph 6 the plaintiff does not admit the correctness of the amount therein stated. And all sums advanced by them for disbursements were paid or allowed to them by the plaintiffs by deducting the amount thereof from the third monthly sum of 1000*l.* paid (subject to such deduction) to the plaintiffs' agents at Calcutta by the defendant on or about the 12th November, 1874.

3. With respect to the alleged breach of warranty and the alleged damages therefrom stated in the 7th, 8th, and 9th paragraphs, the plaintiffs say that the steamship was at the date of the charter-party capable of steaming nine knots an hour on a consumption of 30 tons of coal a day. If the steamship did not, during the said charter, steam more than eight knots an hour, and that on a consumption of more than 35 tons a day, as alleged (which the plaintiffs do not admit), it was in consequence of the bad and unfit quality of the coals provided by the defendants for the ship's use.

[Title.]

*Joinder of issue.*

The defendants join issue upon the plaintiffs' reply to their set-off and counter-claim.



No. 11.

187 . B. No.

COLLISION.

In the High Court of Justice.

Admiralty Division.

Writ issued [            ].

THE "AMERICAN."

Between *A.B.* and *C.D.* .. .. Plaintiffs,  
and

*E.F.* and *G.H.* .. .. Defendants.

*Statement of Claim.*

Claim.

1. Shortly before 8 a.m. on the 9th of December, 1874, the brigantine "Katie," of 194 tons register, of which the plaintiffs were owners, manned by a crew of eight hands all told, whilst on a voyage from Dublin to St. John's, Newfoundland, in ballast, was in latitude about 46° N., and longitude 40° 42' W., by account.

2. The wind at such time was about W. by S., a strong breeze, and the weather was clear, and the "Katie" was under doubled-reefed mainsail, reefed mainstaysail, middle staysail, lower topsail, reefed fore staysail, and jib, sailing full and by on the port tack, heading about N.W. ½ N., and proceeding at the rate of about five knots and a half per hour.

3. At such time a steamship under steam and sail, which proved to be the screw steamship "American," was seen at the distance of three or four miles from the "Katie," broad on her port bow, and steering about E. or E. by S. The master of the "Katie" not having been able to take observations for several days, and her chronometer having run down, and the said master wishing to exchange longitudes with the "American," caused an ensign to be hoisted, and marked his longitude by account on a board which he exhibited over the port side. The "Katie" was kept full and by, and the "American" approached rapidly, and attempted to pass ahead of the "Katie," and caused immediate danger of collision, and although thereupon the helm of the "Katie" was put hard a-port and her mainsheet let go, the "American," with her stem struck the "Katie" on her port side, almost amidships, cutting her nearly in two, and the "Katie" sank almost immediately, her crew being saved by the steamer.

4. The "American" improperly neglected to keep clear of the "Katie."

5. The "American" improperly attempted to pass ahead of the "Katie."

6. The "American" improperly neglected to ease her engines, and improperly neglected to stop and reverse her engines in due time.

The plaintiff claims:—

1. That it may be declared that the plaintiffs are entitled to the damage proceeded for:



2. That the bail given by the defendants be condemned in such Collision damage, and in costs :
3. That the accounts and vouchers relating to such damage be referred to the Registrar assisted by merchants to report the amount thereof :
4. Such further and other relief as the nature of the case may require.

[Title.]

*Statement of Defence.*

The defendants say as follows:—

Defence.

1. The "American" is a screw steamship, of 1,368 tons register, with engines of 200-horse power nominal, belonging to the port of Liverpool, and at the time of the occurrences hereinafter mentioned was manned by a crew of 40 hands all told, laden with a cargo of general merchandise, and bound from Port-au-Prince in the West Indies to Liverpool.

2. About 8.5 a.m. on the 28th of November 1874, the "American" was in latitude  $46^{\circ}$  N., longitude  $38^{\circ} 16'$  W., steering E. by S. true magnetic, making under all sail and steam about 12 knots an hour, the wind being about S.W. by S. true magnetic, blowing a strong breeze and the weather hazy, when a vessel, which afterwards proved to be the brigantine "Katie," was observed on the "American's" starboard bow about four miles distant, bearing about S.E. by E. true magnetic, close-hauled to the wind, and steering a course nearly parallel to that of the "American."

3. The "American" kept her course, and when the "Katie" was about three miles distant her ensign was observed by those on board the "American" run up to the main, and she was seen to have altered her course, and to be bearing down towards the "American." The "American's" ensign was afterwards run up, and her master, supposing that the "Katie" wanted to correct her longitude, or to speak the "American," continued on his course, expecting that the "Katie," when she had got sufficiently close to speak or show her black board over her starboard side, would luff to the wind, and pass to windward of the "American."

4. The master of the "American" watched the "Katie" as she continued to approach the "American," and when she had approached as near as he deemed it prudent for her to come, he waved to her to luff, and shortly afterwards, on his observing her to be attempting to cross the bows of the "American," the helm of the latter was immediately put to starboard, and engines stopped and reversed full speed; but notwithstanding, the "American" with her stem came into collision with the port side of the "Katie," a little forward of the main rigging.

5. The "American's" engines were then stopped, and when the crew of the "Katie" had got on board of the "American," the latter's engines were reversed to get her clear of the "Katie," which sunk under the "American's" bows.



Collision.

6. The "Katie" improperly approached too close to the "American."
7. Those on board the "Katie" improperly neglected to luff, and to pass to windward of the "American."
8. Those on board the "Katie" improperly attempted to cross the bows of the "American."
9. Those on board the "Katie" improperly ported her helm before the said collision.
10. Those on board the "Katie" improperly neglected to starboard her helm before the said collision.

[Title.]

*Reply.*

Reply.

The plaintiffs join issue upon the defendants' statement of defence.

No. 12.

187 . B. No.

EQUIPMENT  
OF SHIP.

In the High Court of Justice.  
Admiralty Division.

Writ issued [ ].

THE "TWO ELLENS."

Between *A.B.* and *C.D.* .. .. Plaintiffs,

and

*E.F.* .. .. Defendant.*Statement of Claim.*

Claim.

1. The said vessel was and is a British Colonial vessel, belonging to the Port of Digby, in Nova Scotia, of which no owner or part owner was at the time of the commencement of this action or is domiciled in England or Wales.

2. At the time of the commencement of this action the said vessel was under arrest of this Court.

3. About the month of February, 1868, the said vessel was lying in the Port of London, in need of repairs, and of being equipped and supplied with certain other necessaries.

4. By the order of Messrs. K. L., who were duly authorized, the plaintiffs equipped and repaired the said vessel as she needed, and provided the vessel with necessaries, and there is now due to the plaintiffs for such necessary repairing and equipping, and other necessaries, the sum of 305*l.* 3*s.*, together with interest thereon from the 19th day of February, 1868.

The plaintiffs claim :—

1. Judgment for the said sum of 305*l.* 3*s.*, with such interest thereon as aforesaid until judgment :
2. The condemnation of the ship and the defendant and his bail therein, and in the costs of this suit :
3. Such further relief as the nature of the case requires.



[Title].

*Statement of Defence.*

1. By an instrument of mortgage, in the form and recorded as pre- Defence.  
scribed by the Merchant Shipping Act, 1854, bearing date the 9th of March, 1867, and executed by C. M., blacksmith, D. F., master mariner, and W. H. farmer, all of Weymouth, in the county of Digby, in Nova Scotia, the registered owners of 64-64ths parts or shares in the vessel, the said C. M., D. F., and W. H., mortgaged 64-64th parts or shares in the vessel, of which the said D. F. was also master, to G. T., of Nova Scotia, in consideration of the sum of 5000 dollars advanced by him to the said owners, and for the purpose of securing the repayment by them to him of the said sum with interest thereon.

2. By an instrument of transfer, dated the 16th of July, 1868, in the form prescribed by the said Act, and executed by G. T., in consideration of the sum of 5000 dollars to G. T. paid by the defendant, G. T. transferred to the defendant the mortgage security.

3. The said sum of 5000 dollars, with interest thereon, still remains due on the said security.

4. The vessel was not under the arrest of this Court at the time of the commencement of this action.

5. The vessel did not need to be equipped or repaired as in the fourth paragraph of the plaintiffs' claim mentioned, and she did not at the time of the supply of the articles referred to in the said fourth paragraph as "necessaries" stand in need of such articles. On the contrary, the said vessel could have gone to sea and proceeded on and prosecuted her voyage without such equipments, repairs, and articles referred to as aforesaid, and such equipments, repairs, and other articles were done and effected, and supplied, for the purpose of reclassing the said vessel, and not for any other purpose; and the claim of the plaintiffs is not a claim for necessaries within the meaning of the Admiralty Court Act, 1861, s. 5.

6. The alleged necessaries were not supplied on the credit of the said vessel, but upon the personal credit of J. B., who was the broker for the vessel, and upon the agreement that the plaintiffs were not to have recourse to the vessel.

7. The defendant did not, nor did G. T., in any way order, authorize, or become liable for, and neither of them is in any way liable in respect of the said alleged supplies or any part thereof, and the said vessel was at the time of the commencement of this action, and she still is, of a less value than the amount which, irrespective of the sums referred to in the next article of this answer, is due to the defendant on the said mortgage security.

8. The defendant, in order to save the vessel from being sold by this Court at the instance of certain of her mariners having liens on the said vessel for their wages, has been compelled to pay the said wages, and he claims, if necessary, to be entitled to stand in the place of



Equipment  
of ship.

such mariners, or to add the amounts so paid by him for wages to the amount secured by the said mortgage, and to have priority in respect thereof over the claim of the plaintiffs.

[Title.]

*Reply.*

Reply.

1. The plaintiffs admit that 64-64th shares in the said ship the "Two Ellens," were on or about the 9th day of March, 1867, mortgaged by the said C. M., D. F., and W. H., all of Weymouth, in the county of Digby, Nova Scotia, to the said G. T.
2. Save as afore-mentioned, all the several averments in the said Answer contained are respectively untrue.
3. If there was or is any such instrument of transfer as is mentioned in the second article of the said answer, the same has never been registered according to the provisions of the Merchant Shipping Act, 1854.
4. The said G. T. has never been domiciled in, or resided in the the United Kingdom, and is now resident in Nova Scotia, and the registered owners of the said vessel in the first paragraph of the said Defence mentioned were always and are domiciled in Nova Scotia, and resident out of the United Kingdom.

[Title.]

*Rejoinder*

Rejoinder.

The defendant joins issue upon the third and fourth paragraphs of the Reply.

No. 13.

187 . B. No.

FALSE IM-  
PRISONMENT.

In the High Court of Justice.  
Division.

Writ issued 3rd August, 1876.

Between *A.B.* .. .. Plaintiff,  
and  
*E.F.* .. .. Defendant.

*Statement of Claim.*

Claim.

1. The plaintiff is a journeyman painter. The defendant is a builder, having his building yard, and carrying on business at and for six months before and up to the 22nd August, 187 , the plaintiff was in the defendant's employment as a journeyman painter.
2. On the said 22nd August, 187 , the plaintiff came to work as usual in the defendant's yard, at about six o'clock in the morning.
3. A few minutes after the plaintiff had so come to work the defendant's foreman *X.Y.*, who was then in the yard, called the plaintiff to him, and accused the plaintiff of having on the previous day stolen



a quantity of paint, the property of the defendant, from the yard. The plaintiff denied the charge, but X.Y. gave the plaintiff into the custody of a constable, whom he had previously sent for, upon a charge of stealing paint. False imprisonment.

4. The defendant was present at the time when the plaintiff was given into custody, and authorized and assented to his being so given into custody; and in any case X.Y., in giving him into custody, was acting within the scope and in the course of his employment as the defendant's foreman, and for the purposes of the defendant's business.

5. The plaintiff upon being so given into custody, was taken by the said constable a considerable distance through various streets, on foot, to the police station, and he was there detained in a cell till late in the same afternoon, when he was taken to the police court, and the charge against him was heard before the magistrate then sitting there, and was dismissed.

6. In consequence of being so given into custody, the plaintiff suffered annoyance and disgrace, and loss of time and wages, and loss of credit and reputation, and was thereby unable to obtain any employment or earn any wages for three months.

The plaintiff claims 7. damages.

The plaintiff proposes that this action should be tried in Middlesex.

[Title.]

*Statement of Defence.*

1. The defendant denies that he was present at the time when the plaintiff was given into custody, or that he in any way authorized or assented to his being given into custody. And the said X.Y., in giving the plaintiff into custody, did not act within the scope or in the course of his employment as the defendant's foreman, or for the purposes of the defendant's business. Defence.

2. At some time about five or six o'clock on the being the evening before the plaintiff was given into custody, a large quantity of paint had been feloniously stolen by some person or persons from a shed upon the defendant's yard and premises.

3. At about 5.30 o'clock on the evening of the the plaintiff, who had left off work about half an hour previously, was seen coming out of the shed when no one else was in it, although his work lay in a distant part of the yard from, and he had no business in or near the shed. He was then seen to go to the back of a stack of timber in another part of the yard. Shortly afterwards the paint was found to have been stolen, and it was found concealed at the back of the stack of timber behind which the plaintiff had been seen to go.

4. On the following morning, before the plaintiff was given into custody, he was asked by X.Y. what he had been in the shed and behind the stack of timber for, and he denied having been in either place. X.Y. had reasonable and probable cause for suspecting, and did suspect



that the plaintiff was the person who had stolen the paint, and thereupon gave him into custody.

[Title.]

*Reply.*

**Reply.** The plaintiff joins issue upon the defendant's statement of defence.

No. 14.

1876. W. No. 672.

**FORE-  
CLOSURE.**

In the High Court of Justice.

Chancery Division.

[Name of Judge.]

Writ issued [            ].

Between R. W.            ..            ..            Plaintiff,

and

O. S. and J. B.            ..            ..            Defendants.

*Statement of Claim.*

**Claim.**

1. By an indenture dated the 25th of March, 1867, made between the defendant O. S. of the one part, and the plaintiff of the other part, the defendant O. S., in consideration of the sum of 10,000*l.* paid to him by the plaintiff, conveyed to the plaintiff and his heirs a farm containing 398 acres, situate in the parish of B., in the county of D., with all the coal mines, seams of coal, and other mines and minerals in and under the same, subject to a proviso for redemption of the same premises on payment by the defendant O. S., his heirs, executors, administrators, or assigns, to the plaintiff, his executors, administrators, or assigns, of the sum of 10,000*l.*, with interest for the same in the meantime at the rate of 4*l.* per cent. per annum, on the 25th day of September then next.

2. By an indenture dated the 1st day of April, 1867, made between the defendant O. S. of the one part, and the defendant J. B. of the other part, the defendant O. S. conveyed to the defendant J. B. and his heirs the hereditaments comprised in the hereinbefore stated security of the plaintiff, or some parts thereof, subject to the plaintiff's said security, and subject to a proviso for redemption of the same premises on payment by the defendant O. S., his heirs, executors, administrators, or assigns, to the defendant J. B., his executors, administrators, or assigns, of the sum of 15,000*l.*, with interest for the same in the meantime at the rate of 5*l.* per cent. per annum.

3. The whole of the said sum of 10,000*l.*, with an arrear of interest thereon, remains due to the plaintiff on his said security.

The plaintiff claims as follows:—

1. That an account may be taken of what is due to the plaintiff for principal money and interest on his said security, and that



the defendants may be decreed to pay to the plaintiff what Foreclosure.  
shall be found due to him on taking such account, together  
with his costs of this action, by a day to be appointed by the  
court, the plaintiff being ready and willing, and hereby offering,  
upon being paid his principal money, interest, and costs, at  
such appointed time, to convey the said mortgaged premises  
as the court shall direct.

2. That in default of such payment the defendants may be fore-  
closed of the equity of redemption in the mortgaged premises.
3. Such further or other relief as the nature of the case may  
require.

1876. W. 672.

In the High Court of Justice.

Chancery Division.

[*Name of Judge.*]

Between R. W. .. .. Plaintiff,

and

O. S. and J. B. .. .. Defendants,

(by original action,)

And between the said O. S. .. .. Plaintiff,

and

The said R. W. and J. B., and J. W. .. Defendants,

(by counter-claim.)

*The Defence and Counter-claim of the above-named O. S.*

1. This defendant does not admit that the contents of the indenture Defence.  
of the 25th day of March, 1867, in the plaintiff's statement of com-  
plaint mentioned are correctly stated therein.

2. The indenture of the 1st day of April, 1867, in the statement of  
claim mentioned, was not a security for the sum of 15,000*l.* and interest  
at 5*l.* per cent. per annum, but for the sum of 14,000*l.* only, with in-  
terest at the rate of 4*l.* 10*s.* per cent. per annum.

3. This defendant submits that under the circumstances in his  
counter-claim mentioned, the said indentures of the 25th day of March,  
1867, and the 1st day of April, 1867, did not create any effectual  
security upon the mines and minerals in and under the lands in the  
same indentures comprised, and that the same mines and minerals  
ought to be treated as excepted out of the said securities.

And by way of counter-claim this defendant states as follows:—

Counter-  
claim.

1. At the time of the execution of the indenture next hereinafter  
stated, J. C. A. was seised in fee simple in possession of the  
lands described in the said indentures, and the mines and  
minerals in and under the same.

2. By indenture dated the 24th of March, 1860, made between the  
said J. C. A. of the first part, E. his wife, then E. S., spinster,



**Foreclosure.**

of the second part, and this defendant and the above-named J. W. of the third part, being a settlement made in contemplation of the marriage, shortly after solemnized, between the said J. C. A. and his said wife, the said J. C. A. granted to this defendant and the said J. W., and their heirs, all the coal mines, beds of coal, and other the mines and minerals under the said lands, with such powers and privileges as in the now-stating indenture mentioned for the purpose of winning, working, and getting the same mines and minerals, to hold the same premises to this defendant and the said J. W. and their heirs to the use of the said J. C. A., his heirs and assigns, till the solemnization of the said marriage, and after the solemnization thereof to the use of this defendant and the said J. W., their executors and administrators, for the term of 500 years, from the day of the date of the now-stating indenture, upon the trusts therein mentioned, being trusts for the benefit of the said J. C. A., and his wife and the children of their marriage, and from and after the expiration or other determination of the said term of 500 years, and in the meantime subject thereto, to the use of the said J. C. A., his heirs and assigns for ever.

3. By indenture dated the 12th of May, 1860, made between the said J. C. A. of the one part, and W. N. of the other part, the said J. C. A. granted to the said W. N. and his heirs the said lands, except the coal mines, beds of coal, and other mines and minerals thereunder, to hold the same premises unto and to the use of the said W. N., his heirs and assigns for ever, by way of mortgage, for securing the payment to the said W. N., his executors, administrators, or assigns, of the sum of 26,000*l.*, with interest as therein mentioned.
4. On the 14th of January, 1864, the said J. C. A. was adjudicated a bankrupt, and shortly afterwards J. L. was appointed creditor's assignee of his estate.
5. Some time after the said bankruptcy, the said W. N., under a power of sale in his said mortgage deed, contracted with this defendant for the absolute sale to this defendant of the property comprised in his said security for an estate in fee simple in possession, free from incumbrances, for the sum of 26,000*l.*, and the said J. L., as such assignee as aforesaid, agreed to join in the conveyance to this defendant for the purpose of signifying his assent to such sale.
6. By indenture dated the 1st of September, 1866, made between the said W. N. of the first part, the said J. L. of the second part, the said J. C. A. of the third part, and this defendant of the fourth part, reciting the said agreement for sale, and reciting that the said J. L., being satisfied that the said sum of



26,000*l.* was a proper price, had, with the sanction of the Foreclosure Court of Bankruptcy, agreed to confirm the said sale, it was witnessed that in consideration of the sum of 26,000*l.*, with the privity and approbation of the said J. L. paid by this defendant to the said W. N., he the said W. N. granted, and the said J. C. A. ratified and confirmed to this defendant and his heirs, all the hereditaments comprised in the said security of the 12th day of May, 1860, with their rights, members, and appurtenances, and all the estate, right, title, and interest of them, the said W. N. and J. C. A. therein, to hold the same premises unto and to the use of this defendant, his heirs and assigns for ever.

7. The sale to this defendant was not intended to include anything not included in the security of the 12th of May, 1860, and the said J. L. only concurred therein to signify his approval of the said sale, and did not purport to convey any estate vested in him; and the lastly hereinbefore stated indenture did not vest in this defendant any estate in the said mines and minerals.
8. The plaintiff and the defendant J. B. respectively had before they advanced to this defendant the moneys lent by them on their securities in the plaintiff's claim mentioned, full notice that the mines and minerals under the said lands did not belong to this defendant. This fact appeared on the abstracts of title delivered to them before the preparation of their said securities. A valuation of the property made by a surveyor was furnished to them respectively on behalf of this defendant before they agreed to advance their money on their said securities; but although the said lands are in a mineral district, the mines and minerals were omitted from such valuation, and they respectively knew at the time of taking their said securities that the same did not include any interest in the mines and minerals.
9. At the time when the securities of the plaintiff and the defendant J. B. were respectively executed, the plaintiff and the defendant J. B. respectively had notice of the said indenture of settlement of the 24th day of March, 1860.
10. At the time when the plaintiff's security was executed, the mines and minerals under the said lands, with such powers and privileges as aforesaid, were vested in this defendant and the said J. W. for the residue of the said term of 500 years, and subject to the said term, the inheritance in the same mines, minerals, powers, and privileges was vested in the said J. L. as such assignee as aforesaid.
11. The said security to the plaintiff was by mistake framed so as to purport to include the mines and minerals under the said



Foreclosure.

lands, and by virtue thereof the legal estate in moiety of the said mines and minerals became and now is vested in the plaintiff for the residue of the said term of 500 years.

The defendant O. S. claims as follows :

- 1. That it may be declared that neither the plaintiff nor the defendant J. B. has any charge or lien upon that one undivided moiety, which in manner aforesaid became vested in the plaintiff for the residue of the said term of 500 years, of and in the mines and minerals in and under the lands mentioned in the plaintiff's said security.
- 2. That it may be declared that the said mines and minerals, rights, and privileges, which by the said indenture of settlement were vested in the defendant O. S. and the said J. W. for the said term of 500 years, upon trust as therein mentioned, ought to be so conveyed and assured as that the same may become vested in the defendant O. S. and the said J. W. for all the residue of the said term upon the trusts of the said settlement.
- 3. That the said R. W. and J. W. may be decreed to execute all such assurances as may be necessary for giving effect to the declaration secondly hereinbefore prayed.
- 4. To have such further or other relief as the nature of the case may require.

1876. W. 672.

In the High Court of Justice.

Chancery Division.

[Name of Judge.]

Between R. W. .. .. . Plaintiff,  
and  
O. S. and J. B. .. .. . Defendants,  
(by original action,)  
And between the said O. S. .. .. . Plaintiff,  
and  
The said R. W., and J. B., and J. W. Defendants.  
(by counter-claim.)

*The Reply of the Plaintiff R. W.*

Reply.

- 1. The plaintiff joins issue with the defendants upon their several defences, and in reply to the statements alleged by the defendant O. S., by way of counter-claim, the plaintiff says as follows :
  - 1. The plaintiff does not admit the execution of any such indenture as is stated in the said counter-claim to bear date the 24th of March, 1860.
  - 2. The plaintiff does not admit that the indenture of the 12th of May, 1860, is stated correctly in the statement of claim.



3. When the defendant O. S., in the year 1866, applied to the plaintiff to advance him the sum of 10,000*l.*, he offered to the plaintiff as a security the lands which were afterwards comprised in the indenture of the 25th of March, 1867, including the mines and minerals which he now alleges were not to form part of the security, and the plaintiff agreed to lend the said sum upon the security of the said lands, including such mines and minerals. During the negotiation for the said loan a valuation of the property to be included in the mortgage was delivered to the plaintiff on behalf of the said defendant. Such valuation included the mines and minerals; and the plaintiff consented to make the loan on the faith of such valuation. The plaintiff did not know when he took his security that it did not include any interest in the said mines and minerals; on the contrary, he believed that the entirety of such mines and minerals was to be included therein. Foreclosure.
  4. The plaintiff does not admit the contents of the indenture of the 1st of September, 1866, to be as alleged, or that it was so framed as not to include the said mines and minerals, or that it was not intended to include anything not included in the security of the 12th of May, 1860, or that J. L. in the counter-claim named only concurred therein to signify his approval of the said sale, and did not purport to convey any estate vested in him.
  5. Save so far as the plaintiff's solicitor may have had notice by means of the abstract of title that the mines and minerals under the said lands did not belong to the defendant O. S., the plaintiff had not any notice thereof, and he does not admit that it appeared from the abstract of title that such was the case. The mines were not omitted from any valuation delivered to the plaintiff as mentioned in the counter-claim.
  6. The plaintiff admits that when he took his security he was aware that there was indorsed on the deed by which the said lands were conveyed by J. C. A. in the counter-claim named a notice of a settlement of 24th March, 1860, but he had no further or other notice thereof, and though his solicitor inquired after such settlement none was ever produced.
  7. The plaintiff submits that if it shall appear that no further interest in the said mines and minerals was conveyed to him by his said security than one undivided moiety of a term of 500 years therein, as alleged by the said counter-claim, such interest is effectually included in the plaintiff's said security, and that he is entitled to foreclose the same.
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No. 15.

187 . B. No.

FRAUD.

In the High Court of Justice.

Division.

Writ issued 3rd August, 1876.

Between *A.B.* .. .. . Plaintiff,  
 and  
*E.P.* .. .. . Defendant.

*Statement of Claim.*

Claim.

1. In or about March, 1875, the defendant caused to be inserted in the *Daily Telegraph* newspaper an advertisement, in which he offered for sale the lease, fixtures, fittings, goodwill, and stock-in-trade of a baker's shop and business, and described the same as an increasing business, and doing 12 sacks a week. The advertisement directed application for particulars to be made to *X.Y.*

2. The plaintiff having seen the advertisement applied to *X.Y.*, who placed him in communication with the defendant, and negotiations ensued between the plaintiff and the defendant for the sale to the plaintiff of the defendant's bakery at with the lease, fixtures, fittings, stock-in-trade, and goodwill.

3. In the course of these negotiations the defendant repeatedly stated to the plaintiff that the business was a steadily increasing business, and that it was a business of more than 12 sacks a week.

4. On the 5th of April, 1875, the plaintiff, believing the said statements of the defendant to be true, agreed to purchase the said premises from the defendant for 500*l.*, and paid to him a deposit of 200*l.* in respect of the purchase.

5. On the 15th April the purchase was completed, an assignment of the lease executed, and the balance of the purchase money paid. On the same day the plaintiff entered into possession.

6. The plaintiff soon afterwards discovered that at the time of the negotiations for the said purchase by him and of the said agreement, and of the completion thereof, the said business was and had long been a declining business; and at each of those times, and for a long time before, it had never been a business of more than 8 sacks a week. And the said premises were not of the value of 500*l.*, or of any saleable value whatever.

7. The defendant made the false representations hereinbefore mentioned well knowing them to be false, and fraudulently, with the intention of inducing the plaintiff to make the said purchase on the faith of them.

The plaintiff claims *l.* damages.

[Title.]

*Statement of Defence.*

Defence.

1. The defendant says that at the time when he made the repre-



sentations mentioned in the third paragraph of the statement of claim Fraud. and throughout the whole of the transactions between the plaintiff and defendant, and down to the completion of the purchase and the relinquishment by the defendant of the said shop and business to the plaintiff, the said business was an increasing business, and was a business of over 12 sacks a week. And the defendant denies the allegations of the sixth paragraph of the statement of claim.

2. The defendant repeatedly during the negotiations told the plaintiff that he must not act upon any statement or representation of his, but must ascertain for himself the extent and value of the said business. And the defendant handed to the plaintiff for this purpose the whole of his books, shewing fully and truthfully all the details of the said business, and from which the nature, extent, and value thereof could be fully seen, and those books were examined for that purpose by the plaintiff, and by an accountant on his behalf. And the plaintiff made the purchase in reliance upon his own judgment, and the result of his own inquiries and investigations, and not upon any statement or representation whatever of the defendant.

[Title.]

*Reply.*

The plaintiff joins issue upon the defendant's statement of defence. Reply.

No. 16.

187 . B. No.

In the High Court of Justice.

GUARANTEE.

Division.

Writ issued 3rd August, 1876.

Between *A.B.* and *C.D.* .. .. Plaintiffs,

and

*E.F.* and *G.H.* .. .. Defendants.

*Statement of Claim.*

1. The plaintiffs are brewers, carrying on their business at Claim. under the firm of *X.Y. & Co.*

2. In the month of March, 1872, *M.N.* was desirous of entering into the employment of the plaintiffs as a traveller and collector, and it was agreed between the plaintiffs and the defendants and *M.N.*, that the plaintiffs should employ *M.N.* upon the defendant entering into the guarantee hereinafter mentioned.

3. An agreement in writing was accordingly made and entered into, on or about the 30th March, 1872, between the plaintiffs and the defendant, whereby in consideration that the plaintiffs would employ *M.N.* as their collector the defendant agreed that he would be answerable for the due accounting by *M.N.* to the plaintiffs for and the due



Guarantee. payment over by him to the plaintiffs of all moneys which he should receive on their behalf as their collector.

4. The plaintiffs employed *M.N.* as their collector accordingly, and he entered upon the duties of such employment, and continued therein down to the 31st of December, 1873.

5. At various times between the 29th of September and the 25th of December, 1873, *M.N.* received on behalf of the plaintiffs and as their collector sums of money from debtors of the plaintiffs amounting in the whole to the sum of 950*l.*; and of this amount *M.N.* neglected to account for or pay over to the plaintiffs sums amounting in the whole to 227*l.*, and appropriated the last-mentioned sums to his own use.

6. The defendant has not paid the last-mentioned sums, or any part thereof, to the plaintiffs.

The plaintiffs claim :—

No. 17.

INTEREST  
SUIT  
(PROBATE).

In the High Court of Justice.  
Probate Division.  
Between *A.B.* .. .. Plaintiff,  
and  
*C.D.* .. .. Defendant.

187 . B. No.

Statement of Claim.

Claim. 1. *M.N.*, late of No. High Street, Putney, in the county of Surrey, grocer, deceased, died on or about the day of , at No. 1, High Street, Putney, aforesaid, a widower, without child, parent, brother or sister, uncle or aunt, nephew or niece.

2. The plaintiff is the cousin-german, and one of the next of kin of the deceased.

The plaintiff claims :—

That the Court decree to him a grant of letters of administration of the personal estate and effects of the said deceased as his lawful cousin-german, and one of his next of kin.

[Title.]

Defence.

Defence. 1. The defendant admits that *M.N.* died a widower, without child, parent, brother or sister, uncle or aunt, or niece, but he denies that he died without nephew.

2. The deceased had a brother named *G.B.*, who died in his lifetime.

3. *G.B.* was married to *E.H.* in the parish church of in the county of on the day of and had issue of such marriage, the defendant, who was born in the month of and is the nephew and next of kin of the deceased.



The defendant therefore claims :—

That the Court pronounce that he is the nephew and next of kin of the deceased, and as such entitled to a grant of letters of administration of the personal estate and effects of the deceased.

[Title.]

*Reply.*

1. The plaintiff denies that *G.B.* was married to *E.H.*
2. He also denies that the defendant is the issue of such marriage.

Reply.

No. 18.

187 . B. No. LANDLORD  
AND TENANT.

In the High Court of Justice.  
Division.

Writ issued 3rd August, 1876.

Between *A.B.* .. .. Plaintiff,  
and  
*C.D.* .. .. Defendant.

*Statement of Claim.*

1. On the       day of       the plaintiff, by deed, let to the de- Claim.  
fendant a house and premises, No. 52,       Street, in the city of  
London, for a term of 21 years from the       day of       , at the  
yearly rent of 120*l.*, payable quarterly.

2. By the said deed the defendant covenanted to keep the said house and premises in good and tenantable repair.

3. The said deed also contained a clause of re-entry, entitling the plaintiff to re-enter upon the said house and premises, in case the rent thereby reserved, whether demanded or not, should be in arrear for 21 days, or in case the defendant should make default in the performance of any covenant upon his part to be performed.

4. On the 24th June, 187   , a quarter's rent became due, and on the 29th September, 187   , another quarter's rent became due; and on the 21st October, 187   , both had been in arrear for 21 days, and both are still due.

5. On the same 21st October, 187   , the house and premises were not and are not now in good or tenantable repair, and it would require the expenditure of a large sum of money to reinstate the same in good and tenantable repair, and the plaintiff's reversion is much depreciated in value.

The plaintiff claims :—

1. Possession of the said house and premises.
2.       *l.* for arrears of rent.
3.       *l.* damages for the defendant's breach of his covenant to repair.







ciently, and of the materials so supplied, some were bad and insufficient, and a portion of the work in the claim mentioned was done in and about altering and endeavouring to make good such bad and insufficient work and materials. The defendant has paid in respect of the work and materials in the claim mentioned the sum of 356*l.* 17*s.* 9*d.*, and the said sum is sufficient to satisfy the claims of the plaintiffs. Necessaries  
for Ship.

3. The defendants deny the allegations contained in the second paragraph of the claim, so far as they relate to any claim beyond the said sum of 356*l.* 17*s.* 9*d.*, and say that if the plaintiffs did execute any work or did supply any materials other than the work and materials mentioned in the second paragraph of this defence, such work was not necessary work, and such materials were not necessary materials, within the meaning of the fifth section of the Admiralty Court Act, 1861, and were not supplied in such circumstances as to render the defendants liable to pay for the same.

[Title.]

*Reply.*

1. The plaintiffs join issue upon the statement of defence.

*Reply.*

No. 20.

187 . B. No. NEGLIGENCE.

In the High Court of Justice.

Division.

Writ issued 3rd August, 1876.

Between *A.B.* .. .. Plaintiff,

and

*E.F.* .. .. Defendant.

*Statement of Claim.*

1. The plaintiff is a shoemaker, carrying on business at . The defendant is a soap and candle manufacturer of . Claim.

2. On the 23rd May, 1875, the plaintiff was walking eastward along the south side of Fleet Street, in the city of London, at about three o'clock in the afternoon. He was obliged to cross Street, which is a street running into Fleet Street at right angles on the south side. While he was crossing this street, and just before he could reach the foot pavement on the further side thereof, a two-horse van of the defendant's, under the charge and control of the defendant's servants, was negligently, suddenly, and without any warning, turned at a rapid and dangerous pace out of Fleet Street into Street. The pole of the van struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken, and he was bruised and injured on the side and back, as well



**Negligence.** as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits (*m*).

The plaintiff claims                      1. damages.

[Title.]

*Statement of Defence.*

**Defence.** 1. The defendant denies that the van was the defendant's van, or that it was under the charge or control of the defendant's servant. The van belonged to Mr. John Smith, of                      , a carman and contractor employed by the defendant to carry and deliver goods for him; and the persons under whose charge and control the said van was were the servants of the said Mr. John Smith.

2. The defendant does not admit that the van was turned out of Fleet Street, either negligently, suddenly, or without warning, or at a rapid or dangerous pace.

3. The defendant says, that the plaintiff might and could by the exercise of reasonable care and diligence, have seen the van approaching him, and avoided any collision with it.

4. The defendant does not admit the statements of the third paragraph of the statement of claim.

[Title.]

*Reply.*

**Reply.** The plaintiff joins issue upon the defendant's statement of defence (*n*).

No. 21.

187 . B. No.

POSSESSION  
OF SHIP.

In the High Court of Justice.

Admiralty Division.

Writ issued [                      ].

THE "LADY OF THE LAKE."

Between *A.B.* .. .. . Plaintiff,

and

*E.F.* .. .. . Defendant.

*Statement of Claim.*

**Claim.** 1. On or about the 15th of July, 1868, an agreement was entered into between the plaintiff and J. D., who was then the sole owner of the above-named barque "Lady of the Lake," whereby J. D. agreed to sell, and the plaintiff agreed to purchase, 32-64th parts or shares of the vessel for the sum of 500*l.*; payment 300*l.* in cash, and the remainder

(*m*) See post, p. 418.

(*n*) See criticisms on this claim and

defence in observations under Order xix., Rules 4 and 17, ante, pp. 234, 235.



by purchaser's acceptances at three and six months' date, and it was thereby agreed that the plaintiff was to be commander of the vessel. Possession  
of Ship.

2. The plaintiff accordingly paid to J. D. the sum of 300*l.*, and gave him his (the plaintiff's) acceptances at three and six months' date for the residue of the said purchase money, and J. D. by bill of sale transferred 32-64th parts or shares in the vessel to the plaintiff, which bill of sale was duly registered on the 18th of July, 1868; the plaintiff has since been and still is the registered owner of such 32-64th shares.

3. The vessel then sailed under the plaintiff's command on a voyage from Sunderland to the Brazils and other ports, and then on a homeward voyage to Liverpool, where she arrived on the 18th of June, 1869, and having there discharged her homeward cargo she sailed thence under the plaintiff's command with a cargo to the Tyne, and thence to Sunderland, at which port she arrived on the 9th of August, 1869.

4. The plaintiff then made several ineffectual applications to J. D., with a view to obtaining another charter for the said vessel, and after she had been lying idle for a considerable time, the plaintiff on or about the 16th of September, 1869, obtained an advantageous charter for her to proceed to Barcelona with a cargo of coals, and with a view to enabling her to execute such charter the plaintiff paid the dock dues, and moved the vessel into a slipway in order that her bottom might be cleaned, but on or about the 17th of September, whilst the vessel was on the shore adjoining the slipway, the defendant, to whom the said J. D. had in the meantime transferred his 32-64th parts, forcibly took the vessel out of the possession of the plaintiff, and refused and still refuses to allow the plaintiff to take the vessel on her said voyage to Barcelona, and by reason thereof heavy loss is being occasioned to the plaintiff.

The plaintiff claims:—

1. Judgment giving possession of the vessel "Lady of the Lake" to the plaintiff:
2. The condemnation of the defendant in costs of suit, and in all losses and damages occasioned by the defendant to the plaintiff:
3. Such further relief as the nature of the case requires.

[Title.]

*Defence.*

1. The defendant says that the acceptances in the second paragraph of the claim mentioned were respectively dishonoured by the plaintiff, and have never yet been paid by him. Defence.

2. It was agreed between the plaintiff and J. D., that J. D. should, act, and he has since always acted, as ship's husband of the "Lady of the Lake."

3. On the 31st of August, 1869, J. D. sold to the defendant, for the sum of 400*l.*, and by bill of sale duly executed, transferred to him his



Possession  
of Ship.

32-64th shares, and the bill of sale was duly registered on the 14th of September following.

4. After the "Lady of the Lake" had arrived at Sunderland, and after the defendant had purchased from J. D. his 32-64th shares of the "Lady of the Lake," the defendant placed the vessel in the custody and possession of a shipkeeper. The plaintiff, however, unlawfully removed her from such possession, and thereupon the defendant had the vessel taken into the South Dock of the harbour at Sunderland, with orders that she should be kept there. What the defendant did, as in this article mentioned, he did with the consent and full approval of J. D.

5. At the time of the sale of the "Lady of the Lake" by J. D. to the defendant as afore-mentioned, there was and there still is due from the plaintiff, as part owner of the "Lady of the Lake," to J. D., as part owner and ship's husband, a sum of money exceeding 300*l.* in respect of the vessel and her voyages over and above the amount of the unpaid acceptances.

6. Save as herein appears, the averments in the fourth paragraph of the claim contained are untrue, and if the charter-party mentioned in that paragraph was obtained by the plaintiff as alleged, which the defendant does not admit, it was obtained by him without the authority, consent, or knowledge of J. D. or the defendant.

7. Before the defendant took possession of the vessel as afore-mentioned, the plaintiff ceased to be master of her, with the consent of J. D. or the defendant.

8. J. D. has instituted an action against the said vessel in                      in order to have the accounts taken between him and the plaintiff, and to enforce payment of the money due from the plaintiff to him.

[Title.]

*Reply.*

*Reply.*

1. The plaintiff says in reply to the first paragraph of the defence that the bills therein mentioned were dishonoured by the plaintiff because J. D. was indebted to the plaintiff in a large amount for his wages as master, and for his share of the earnings of the "Lady of the Lake," and refused payment thereof.

2. J. D. did not place the vessel in the exclusive custody or possession of a shipkeeper as in the fifth paragraph of the defence stated or implied. On the contrary, the vessel continued in the custody and possession of the plaintiff, who still holds her register. A man was sent on board the vessel by J. D., to look after J. D.'s share in the said vessel while she was in dock, but he did not dispossess the said plaintiff or take exclusive possession of the vessel, and the plaintiff was not dispossessed of the vessel until on or about the 17th of September last.

3. Except as hereinbefore appears, the plaintiff joins issue upon the defendant's statement of defence.



[Title.]

*Rejoinder.*

The defendant joins issue upon the first and second paragraphs of the Rejoinder.  
Reply.

No. 22.

187 . B. No.

PROMISSORY  
NOTE.

In the High Court of Justice.  
Division.

Writ issued 3d August, 1876.

Between *A.B.* .. .. Plaintiff  
and  
*E.F.* .. .. Defendant.

*Statement of Claim.*

1. The defendant on the            day of            made his promissory Claim.  
note, whereby he promised to pay to the plaintiff or his order            l.  
three months after date.

2. The note became due on the            day of            , 1874, and the  
defendant has not paid it.

The plaintiff claims:—

The amount of the note and interest thereon to judgment.

The plaintiff proposes that this action should be tried in the county  
of            .

[Title.]

*Statement of Defence.*

1. The defendant made the note sued upon under the following cir- Defence.  
cumstances:—The plaintiff and defendant had for some years been in  
partnership as coal merchants, and it had been agreed between them  
that they should dissolve partnership, that the plaintiff should retire  
from the business, that the defendant should take over the whole of the  
partnership assets and liabilities, and should pay the plaintiff the value  
of his share in the assets after deducting the liabilities.

2. The plaintiff thereupon undertook to examine the partnership  
books, and inquire into the state of the partnership assets and liabili-  
ties; and he did accordingly examine the books, and make the said in-  
quiries, and he thereupon represented to the defendant that the assets  
of the firm exceeded 10,000l., and that the liabilities of the firm were  
under 3000l., whereas the fact was that the assets of the firm were less  
than 5000l., and the liabilities of the firm largely exceeded the assets.

3. The misrepresentations mentioned in the last paragraph, induced  
the defendant to make the note now sued on, and there never was any  
other consideration for the making of the note.







4. The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud, so far as is within the defendant's present knowledge being [*state the nature of the fraud*]. Probate  
of Will.

5. The said deceased at the time of the execution of the said will and codicil did not know and approve of the contents thereof, or of the contents of the residuary clause in the said will [*as the case may be*].

6. The deceased made his true last will, dated the 1st day of January, 1873, and in the said will appointed the defendant sole executor thereof. [*Propound this will as in paragraphs 2 and 3 of claim.*]

The defendant claims:—

1. That the Court will pronounce against the said will and codicil propounded by the plaintiff:
2. That the Court will decree probate of the said will of the said deceased, dated the 1st of January, 1873, in solemn form of law.

[Title.]

*Reply.*

1. The plaintiff joins issue upon the statement of defence of the defendant, as contained in the first, second, third, fourth, and fifth paragraphs thereof.

2. The plaintiff says that the said will of the said deceased, dated the 1st of January, 1873, was duly revoked by the will of the said 1st of October, 1873, propounded by the plaintiff in his statement of claim.

No. 24.

187 . B. No.

In the High Court of Justice.

Common Pleas Division.

Writ issued 3rd August, 1876.

Between *A.B.* .. .. Plaintiff,  
and

*C.D.* .. .. Defendant.

RECOVERY  
OF LAND.  
LANDLORD  
AND TENANT.

*Statement of Claim.*

1. On the       day of       the plaintiff let to the defendant a house, No. 52,       street, in the city of London, as tenant from year to year, at the yearly rent of 120*l.*, payable quarterly, the tenancy to commence on the       day of       .

2. The defendant took possession of the house and continued tenant thereof until the       day of       last, when the tenancy determined by a notice duly given.

3. The defendant has disregarded the notice and still retains possession of the house.



## Landlord and Tenant.

**The plaintiff claims :—**

1. Possession of the house.
2.            l. for mesne profits from the            day of            .

**The plaintiff proposes that this action should be tried in London.**

187 . No.

**In the High Court of Justice.**

**Common Pleas Division.**

Between A.B. .. .. Plaintiff,

and

**C.D.** .. .. **Defendant.**

(by original action,)

And between C.D.                   ..                   ..                   ..                   .. Plaintiff,

and

**A.B.** .. .. . **Defendant.**

(by counter-claim.)

**The defence and counter-claim of the above-named C.D.**

## Defence.

1. Before the determination of the tenancy mentioned in the statement of claim, the plaintiff *A.B.*, by writing dated the            day of           , and signed by him, agreed to grant to the defendant *C.D.* a lease of the house mentioned in the statement of claim, at the yearly rent of 150*l.*, for the term of 21 years, commencing from the day of           , when the defendant *C.D.*'s tenancy from year to year determined, and the defendant has since that date been and still is in possession of the house under the said agreement.

**Counter-claim.**

2. By way of counter-claim the defendant claims to have the agreement specifically performed and to have a lease granted to him accordingly, and for the purpose aforesaid, to have this action transferred to the Chancery division.

187 . No.

**In the High Court of Justice.**

**Chancery Division.**

(Transferred by order dated \_\_\_\_\_ day of \_\_\_\_\_.)

Between *A.B.* .. .. Plaintiff,

**and**

**C.D.            ..            ..            ..            ..    Defendant,**

(by original action,)

And between C.D. .. .. Plaintiff,

and

**A.B.            ..            ..            ..            ..    Defendant.**

(by counter-claim.)

**The reply of the plaintiff A.B.**

**Reply.**

The plaintiff *A.B.* admits the agreement stated in the defendant *C.D.*'s statement of defence, but he refuses to grant to the defendant a lease, saying that such agreement provided that the lease should con-



tain a covenant by the defendant to keep the house in good repair and a power of re-entry by the plaintiff upon breach of such covenant, and the plaintiff says that the defendant has not kept the house in good repair, and the same is now in a dilapidated condition.

[Title.]

*Joinder of Issue.*

The defender *C.D.* joins issue upon the plaintiff *A.B.*'s statement in reply.

No. 25.

187 . B. No.

RECOVERY OF  
LAND.

In the High Court of Justice.

Common Pleas Division.

Writ issued 3rd August, 1876.

Between *A.B.* and *C.D.* .. .. Plaintiffs,

and

*E.F.* .. .. Defendant.

*Statement of Claim.*

1. *K. L.*, late of Sevenoaks in the county of Kent, duly executed his last will, dated the 4th day of April, 1870, and thereby devised his lands at or near Sevenoaks, and all other his lands in the county of Kent, unto and to the use of the plaintiffs and their heirs, upon the trusts therein mentioned for the benefit of his daughters Margaret and Martha, and appointed the plaintiffs executors thereof.

2. *K. L.* died on the 3rd day of January, 1875, and his said will was proved by the plaintiffs in the Court of Probate on or about the 4th day of February, 1875.

3. *K. L.* was at the time of his death seised in fee of a house at Sevenoaks, and two farms near there called respectively , the home farm containing 276 acres, and the Longton farm containing 700 acres, both in the county of Kent.

4. The defendant, soon after the death of *K. L.*, entered into possession of the house and two farms, and has refused to give them up to the plaintiff.

The plaintiffs claim :

1. Possession of the house and two farms :

2.                    1. for mesne profits of the premises from the death of *K.L.* till such possession shall be given.

The plaintiff proposes that this action should be tried in the county of Kent.

[Title.]

*Statement of Defence.*

1. The defendant is the eldest son of *I. L.* deceased, who was the eldest son of *K. L.*, in the statement of claim named.



Recovery  
of Land.

2. By articles bearing date the 31st day of May, 1827, and made previous to the marriage of *K. L.* with Martha his intended wife, *K. L.*, in consideration of such intended marriage, agreed to settle the house and two farms in the statement of claim mentioned (and of which he was then seised in fee) to the use of himself for his life, with remainder to the use of his intended wife for her life, and after the survivor's decease, to the use of the heirs of the body of the said *K. L.* on his wife begotten, with other remainders over.

3. The marriage soon after took effect, *K. L.*, by deeds of lease and release, bearing date respectively the 4th and 5th of April, 1828, after reciting the articles in alleged performance of them, conveyed the house and two farms to the use of himself for his life, with remainder to the use of his wife for her life, and after the decease of the survivor of them, to the use of the heirs body of *K. L.* on the said Martha to be begotten, with other remainders over.

4. There was issue of the marriage an only son Thomas L and two daughters. After the death of Thomas L, which took place in February, 1864, *K. L.*, on the 3rd May, 1864, executed a disentailing assurance, which was duly enrolled and thereby conveyed the house and two farms to the use of himself in fee.

[Title.]

*Reply.*

Reply. The plaintiffs join issue upon the defendant's statement of defence.

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No. 26.

SALVAGE.

In the High Court of Justice.

Admiralty Division.

Writ issued [ ]

THE "CAMPANIL."

Between *A.B.* and *C.D.* .. .. Plaintiffs,  
and  
*E.F.* and *G.H.* .. .. Defendants.

*Statement of Claim.*

Claim.

1. The "Brazilian" is a screw steamer belonging to the port of Newcastle, of the burthen of 1359 tons gross registered tonnage, and propelled by engines of 130-horse power, and at the time of the rendering of the salvage services hereinafter mentioned she was navigated by her master and a crew of twenty-four hands. She left the Port of Newcastle on the 27th of November, 1873, on a voyage to Genoa, and thence by way of Palmaras and Aguilas to the Tyne, and about 10 a.m. on the 26th of December, 1873, in the course of her homeward voyage, with a cargo of merchandise, she was off the coast of Portugal, the Island of Ons bearing about S.E. by E., when those on board her



sighted a disabled steamer about four points on their starboard bow, *Salvage*. in-shore, flying signals of distress. A strong gale was blowing at the time, and there was a very heavy sea running.

2. The "Brazilian" at once made towards the disabled steamer, which proved to be the "Campanil," the vessel proceeded against in this action. She was heavily laden with a cargo of iron ore. The "Brazilian" as she approached the "Campanil" signalled to her, and the "Campanil" answered by signal that her engines had broken down. By this time the "Campanil" was heading in-shore, rolling heavily, and shipping a large quantity of water. The "Brazilian" came under the lee of the "Campanil" and asked if she wanted assistance. Her master replied that he wanted to be towed to Vigo as his vessel had lost her screw. The master of the "Brazilian" then asked those on board the "Campanil" to send him a hawser, and for a long time those on board the "Brazilian" made attempts to get a hawser from the "Campanil," and exposed themselves and their vessel to great danger in doing so. The wind and sea rendering it impossible to get the hawser whilst the "Brazilian" was to leeward of the "Campanil," the "Brazilian" went to windward and attempted to float lines by means of life buoys to the "Campanil." During all this time the "Campanil" was quite unmanageable, and yawed about, and there was very great difficulty in manœuvring the "Brazilian" so as to retain command over her and keep her near the "Campanil." It was necessary to keep constantly altering the engines of the "Brazilian," setting them on ahead and reversing them quickly, and in consequence the engines laboured heavily and were exposed to great danger of being strained.

3. Whilst the "Brazilian" was endeavouring to float lines to the "Campanil," the "Campanil" made a sudden lurch and struck the "Brazilian" on her port quarter, knocking in her port bulwark and rail, and causing other damage to the vessel. After many unsuccessful efforts by those on board the "Brazilian," and after they had lost two life buoys and a quantity of rope, a hawser from the "Campanil" was at length made fast on board the "Brazilian," and the "Brazilian" with the "Campanil" in tow steamed easy ahead. A second hawser was then got out and made fast with coir springs, and the "Brazilian" then commenced to tow full speed ahead, each hawser having a full scope of 90 fathoms.

4. The "Brazilian" made towards Vigo, which was about 35 miles distant, the vessels made about two knots an hour, the "Brazilian" keeping her engines going at full speed. The "Brazilian" laboured very heavily, and both vessels shipped large quantities of water.

5. About noon one of the tow ropes broke, and both vessels were in danger of being driven ashore, broken water and rocks appearing to leeward, distant about two miles. After great difficulty the broken hawser was made fast again with a heavy spring of a number of parts of rope, and the "Brazilian" towed ahead under the lee of Ons Island.



Salvage.

6. Shortly afterwards the weather moderated and the sea went down a little, and the "Brazilian" was able to make more way, and about 7 p.m. the same day, she towed the "Campanil" into Vigo harbour in safety.

7. The "Brazilian" was compelled to remain in harbour the next day to pay port charges and clear at the Custom House.

8. The coast off which the aforesaid services were rendered is rocky and exceedingly dangerous, and strong currents set along it, and but for the services rendered by the "Brazilian" the "Campanil" must have gone ashore and been wholly lost, together with her cargo, and in all probability her master and crew would have been drowned. No other steamer was in sight, and there was not any prospect of any other efficient assistance.

9. In rendering the said services the "Brazilian" and those on board her were exposed to great danger. Owing to the heavy sea, and the necessity of towing with a long scope of hawser, there was great danger of fouling the screw of the "Brazilian," and it required constant vigilance on the part of the master and crew to prevent serious accident. The master and crew of the "Brazilian" underwent much extra fatigue and exertion.

10. The damage sustained by the "Brazilian" in rendering the said services amounts to the sum of 150*l.*, and the value of the extra quantity of coal consumed in consequence of the said services is estimated at 16*l.*, and 4*l.* 1*s.* 5*d.* was paid by the owners of the "Brazilian" for harbour dues and other charges at Vigo.

11. The value of the "Campanil," her cargo and freight, at the time of the salvage services were as follows, that is to say: The "Campanil" was of the value of 13,000*l.*, her cargo was of the value of 300*l.*, and the gross amount of freight payable upon delivery of the cargo laden on board her at Barrow-in-Furness was 675*l.*

12. The value of the "Brazilian," her freight and cargo was about 25,050*l.*

The plaintiffs claim:—

1. Such an amount of salvage as to the Court may seem just:
2. That the defendants and their bail be condemned in costs:
3. Such further or other relief as the nature of the case may require.

[Title.]

*Statement of Defence.*

Defence.

1. The defendants say that upon the 22nd of December, 1873, the iron screw steamship "Campanil," of the burden of 660 tons register gross, propelled by engines of 70-horse power, navigated by David Boughton, her master, and a crew of 16 hands, left Porman, bound to Barrow-in-Furness, laden with a cargo of iron ore.

2. At about 8 a.m. of the 26th of December, whilst the "Campanil"



was prosecuting her voyage, the shaft of her propeller broke outside the *Salvage*. stern tube, and she lost her propeller. The "Campanil" was then brought to the wind, which was south by east, blowing fresh, and she proceeded under sail for Vigo, and continued to do so till about 9.30 a.m., when two steamships which had been for some time in sight, and coming to the northward, approached the "Campanil." The ensign of the "Campanil" was hoisted, union up, as a signal to one of such steamships, which afterwards came to the "Campanil," and proved to be the "Brazilian," whose owners, master, and crew are the plaintiffs.

3. The "Brazilian" then signalled the "Campanil" and inquired what was the matter, and was signalled in reply that the "Campanil" had lost her propeller, and required to be towed to Vigo, upon which the "Brazilian" signalled for the rope of the "Campanil" in order to take her in tow. After this the "Brazilian" steamed round the "Campanil" and up on to her starboard bow, and in so doing the "Brazilian" came with her port quarter into the starboard bow of the "Campanil" and did her considerable damage.

4. The "Brazilian" then threw a heaving line on board the "Campanil," and one of the "Campanil's" hawsers was attached to the line and hauled on board the "Brazilian," which passed one of her hawsers to the "Campanil" by means of life buoys, and when such hawsers had been secured between the two vessels the "Brazilian" commenced to tow the "Campanil" for Vigo, it being at this time about 10.30 a.m. and Ons Island then bearing about south-east by south, and distant about 15 miles.

5. The "Brazilian" proceeded with the "Campanil" in tow, but owing to the two vessels being laden, and to the small power of the "Brazilian," she was only able to make very slow progress with the "Campanil," and it was not until 6.30 p.m. of the said day that the "Brazilian" arrived at Vigo with the "Campanil," which then came to anchor off the town there.

6. The defendants on the            day of            tendered to the plaintiffs and have paid into court the sum of 350*l.* for the services so as aforesaid rendered to the "Campanil" and her said cargo and freight, and offered to pay the costs, and submit that the same is ample and sufficient.

[Title.]

*Reply.*

1. The plaintiffs admit the first and second articles of the Answer, *Reply*. and they admit that the "Brazilian" came into collision with the "Campanil," and caused slight damage to the "Campanil," but save as aforesaid they join issue upon the statement of defence.

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No. 27.

187 . No.

TRESPASS TO In the High Court of Justice.  
LAND. Division.

Writ issued 3rd August, 1876.

Between *A.B.* .. .. Plaintiff,  
and  
*E.F.* .. .. Defendant.

*Statement of Claim.*

Claim.

1. The plaintiff was on the 5th March, 1876, and still is the owner and occupier of a farm called Highfield Farm, in the parish of and county .

2. A private road, known as Highfield Lane, runs through a portion of the plaintiff's farm. It is bounded upon both sides by fields of the plaintiff's, and is separated therefrom by a hedge and ditch.

3. For a long time prior to the 5th March, 1876, the defendant had wrongfully claimed to use the said road for his horses and carriages on the alleged ground that the same was a public highway, and the plaintiff had frequently warned him that the same was not a public highway, but the plaintiff's private road, and that the defendant must not so use it.

4. On the 5th March, 1876, the defendant came with a cart and horse, and a large number of servants and workmen, and forcibly used the road, and broke down and removed a gate which the plaintiff had caused to be placed across the same.

5. The defendant and his servants and workmen on the same occasion pulled down and damaged the plaintiff's hedge and ditch upon each side of the road, and went upon the plaintiff's field beyond the hedge and ditch, and injured the crops there growing, and dug up and injured the soil of the road; and in any case the acts mentioned in this paragraph were wholly unnecessary for the assertion of the defendant's alleged right to use, or the user of the said road as a highway.

The plaintiff claims :

1. Damages for the wrongs complained of.
2. An injunction restraining the defendant from any repetition of any of the acts complained of.
3. Such further relief as the nature of the case may require (o).

[Title.]

*Statement of Defence.*

Defence.

1. The defendant says that the road was and is a public highway for horses and carriages; and a few days before the 5th March, 1876, the plaintiff wrongfully erected the gate across the road for the purpose of

(o) It is difficult to see what object can be gained by the plaintiff thus anticipating the defendant's case.



obstructing and preventing, and it did obstruct and prevent the use of the road as a highway. And the defendant on the said 5th March, 1876, caused the said gate to be removed, in order to enable him lawfully to use the road by his horses and carriages as a highway. Form of Demurrers.

2. The defendant denies the allegations of the fifth paragraph of the statement of claim, and says that neither he nor any of his workmen or servants did any act, or used any violence other than was necessary to enable the plaintiff lawfully to use the highway (o).

[Title.]

*Reply.*

The plaintiff joins issue upon the defendant's statement of defence. Reply.

No. 28.

*Form of Demurrer.*

In the High Court of Justice.

Division.

*A.B. v. C.D.*

The defendant [plaintiff] demurs to the [plaintiff's statement of complaint or defendant's statement of defence, or of set-off, or of counter-claim], [or to so much of the plaintiff's statement of complaint as claims . . . . . or as alleges as a breach of contract the matters mentioned in paragraph 17, or as the case may be], and says that the same is bad in law on the ground that [here state a ground of demurrer] and on other grounds, sufficient in law to sustain this demurrer (p).

No. 29.

*Memorandum of Entry of Demurrer for Argument.*

1874. B. No.

In the High Court of Justice.

Division.

*A.B. v. C.D.*

Enter for the argument the demurrer of  
to (q)

*X.Y.,*

Solicitor for the plaintiff [or, &c.]

(o) Plaintiff is a misprint ;—for plaintiff in last line substitute defendant.

(p) Order xxviii., Rule 2, ante,

p. 246.

(q) Order xxviii., Rule 13, ante,  
p. 247.



## APPENDIX D.

Forms of  
Judgments

## FORMS OF JUDGMENTS.

1. *Default of Appearance and Defence in Case of Liquidated Demand.*

1876. B. No.

In the High Court of Justice.

Division.

Between *A.B.* .. .. Plaintiff,  
and*C.D.* and *E.F.* .. .. Defendants,

30th November, 1876.

The defendants [*or the defendant C.D.*] not having appeared to the writ of summons herein (*or not having delivered any statement of defence*), it is this day adjudged that the plaintiff recover against the said defendant *l.*, and costs, to be taxed (*r*).

2. *Judgment in default of Appearance in Action for Recovery of Land.*

[Title, &amp;c.]

30th November, 1876.

No appearance having been entered to the writ of summons herein, it is this day adjudged that the plaintiff recover possession of the land in the said writ mentioned.

3. *Judgment in default of Appearance and Defence after Assessment of Damages.*

1876. B. No.

In the High Court of Justice.

Division.

Between *A.B.* and *C.D.* .. .. Plaintiffs,  
and*E.F.* and *G.H.* .. .. Defendants.

30th November, 1876.

The defendants not having appeared to the writ of summons herein

(*r*) The conclusion of this form and of Form 3 seems very inferior to the present form. Why not £ for costs, instead of "costs to be taxed"? The effect of this change will be that the judgment will never be conclu-

sive as to the whole sum due, and whenever a knowledge of that sum is wanted for any ulterior proceedings, it will have to be proved as a matter of fact.



[*or not having delivered a statement of defence*], and a writ of inquiry, Forms of  
Judgment.  
dated           , 1876, having been issued directed to the sheriff of  
to assess the damages which the plaintiff was entitled to recover, and  
the said sheriff having by his return dated the           1876, returned  
that the said damages have been assessed at           £., it is adjudged that  
the plaintiff recover           £., and costs to be taxed.

#### 4. *Judgment at Trial by Judge without a Jury.*

[*Year, letter, and number.*]

Division.

day of           18 .

[*If in Chancery Division, name of judge.*]

Between *A.B.*           ..           ..           ..           .. Plaintiff,  
and

*O.D., E.F., and G.H.*           ..           .. Defendants.

This action coming on for trial [the           day of           and] this day,  
before           in the presence of counsel for the plaintiff and the defen-  
dants [*or, if some of the defendants do not appear*, for the plaintiff and  
the defendant *C.D.*, no one appearing for the defendants *E.F.*, and  
*G.H.*, although they were duly served with notice of trial as by the  
affidavit of           filed the           day of           appears,] upon hearing  
the probate of the will of           , the answers of the defendants *C.D.*,  
*E.F.*, and *G.H.*, to interrogatories, the admission in writing, dated  
and signed by [Mr.           the solicitor for] the plaintiff *A.B.*  
and by [Mr.           the solicitor for] the defendant *C.D.*, the affidavit of  
filed the           day of           , the affidavit of           filed the  
day of           , the evidence of           taken on their oral exami-  
nation at the trial, and an exhibit marked X., being an indenture  
dated, &c., and made between [parties], and what was alleged by coun-  
sel on both sides: This Court doth declare, &c.

And this Court doth order and adjudge, &c.

#### 5. *Judgment after Trial by a Jury.*

[*Title, &c.*]

15th November, 1876.

The action having on the 12th and 13th November, 1876, been tried  
before the Honourable Mr. Justice           and a special jury of the  
county of           , and the jury having found [*state findings as in officer's  
certificate*], and the said Mr. Justice           having ordered that judg-  
ment be entered for the plaintiff for           £. and costs of suit [*or as the  
case may be*]: Therefore it is adjudged that the plaintiff recover against  
the defendant           £. and           £. for his costs of suit [*or that the*



Forms of  
Judgments.

plaintiff recover nothing against the defendant, and that the defendant recover against the plaintiff      £. for his costs of defence, *or as the case may be*].

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#### 6. *Judgment after Trial before Referee.*

[Title, &c.]

30th November, 1876.

The action having on the 27th November, 1876, been tried before X.Y. Esq. an official [*or special*] referee; and the said X.Y. having found [*state substance of referee's certificate*], it is this day adjudged that

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#### 7. *Judgment upon Motion for Judgment.*

[Title, &c.]

30th November, 1876.

This day before      Mr. X. of counsel for the plaintiff [*or as the case may be*] moved on behalf of the said      [*state judgment moved for*], and the said Mr. X. having been heard of counsel for      and Mr. Y. of counsel for      the Court adjudged

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### APPENDIX E.

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PRÆCIPERE.

*Fieri Facias.*

FORMS OF PRÆCIPERE.

#### 1. *Fieri Facias.*

1876. B. No.

In the High Court of Justice.

Division.

Between A.B.      ..      ..      ..      Plaintiff,  
and

C.D. and others ..      ..      Defendants.

Seal a writ of fieri facias directed to the sheriff of      to levy against C.D.      the sum of      £. and interest thereon at the rate of      £. per centum per annum from the      day of      [and      £ costs] to

Judgment [*or order*] dated      day of      .  
[Taxing master's certificate, dated      day of      .]  
X.Y., solicitor for [*party on whose behalf writ is to issue.*]



2. *Elegit.*

*Elegit.*

187 . B. No.

In the High Court of Justice.

Division.

Between *A.B.* .. .. Plaintiff,  
and

*C.D.* and others .. .. Defendants.

Seal a writ of *elegit* directed to the sheriff of .. against .. of  
in the county of .. for not paying to *A.B.* the sum of  
*l.*, together with interest thereon, from the .. day of  
[and the sum of .. *l.* for costs,] with interest thereon at the rate of  
*4l.* per centum per annum.

Judgment [or order] dated .. day of .. 18 ..  
[Taxing master's certificate, dated .. day of .. 18 ..]  
*X.Y.*,

Solicitor for ..

3. *Venditioni Exponas.*

187 . B. No.

*Venditioni  
exponas.*

In the High Court of Justice.

Division.

Between *A.B.* .. .. Plaintiff,  
and

*C.D.* and others .. .. Defendants.

Seal a writ of *venditioni exponas* directed to the sheriff of .. to  
sell the goods and .. of *C.D.* taken under a writ of *fieri facias* in  
this action tested .. day of ..

*X.Y.*,  
Solicitor for ..

4. *Fieri Facias de Bonis Ecclesiasticis.*

187 . B. No.

*Fl. Fa. de  
Bonis Ecc.*

In the High Court of Justice.

Division.

Between *A.B.* .. .. Plaintiff,  
and

*C.D.* .. .. Defendant.

Seal a writ of *fieri facias de bonis ecclesiasticis* directed to the bishop  
[or archbishop, as the case may be] of .. to levy against *C.D.* the  
sum of .. *l.*

Judgment [or order] dated .. day of ..  
[Taxing master's certificate, dated .. day of ..]  
*X.Y.*,

Solicitor for ..



## PRÆCIPE.

Writs of Sequestration.

5. *Sequestrari Facias de Bonis Ecclesiasticis.*

187 . B. No.

In the High Court of Justice.

Division.

Between *A.B.* .. .. Plaintiff,  
and*C.D.* and others .. .. Defendants.Seal a writ of sequestrari facias directed to the Lord Bishop of  
against *C.D.* for not paying to *A.B.* the sum of £.6. *Writ of Sequestration.*

187 . B. No.

In the High Court of Justice.

Division.

Between *A.B.* .. .. Plaintiff,  
and*C.D.* and others .. .. Defendants.Seal a writ of sequestration against *C.D.* for not at the  
suit of *A.B.* directed to [names of Commissioners].

Order dated day of .

7. *Writ of Possession.*

187 . B. No.

Possession. In the High Court of Justice.

Division.

Between *A.B.* .. .. Plaintiff,  
and*C.D.* and others .. .. Defendants.Seal a writ of possession directed to the sheriff of to deliver  
possession to *A.B.* of .

Judgment dated day of .

8. *Writ of Delivery.*

187 . B. No.

Delivery. In the High Court of Justice.

Division.

Between *A.B.* .. .. Plaintiff,  
and*C.D.* and others .. .. Defendants.Seal a writ of delivery directed to the sheriff of to make  
delivery to *A.B.* of .



9. *Writ of Attachment.*

In the High Court of Justice.

187 . B. No.

Writ of  
Attachment.

Division.

Between *A.B.* .. .. Plaintiff,

and

*C.D.* and others .. .. Defendants.

Seal in pursuance of order dated      day of      an attachment  
directed to the sheriff of      against *C.D.* for not delivering to  
*A.B.*

## APPENDIX F.

## FORMS OF WRITS.

1. *Writ of Fieri Facias.*

187 . B. No.

Forms of  
Writs.

In the High Court of Justice.

Division.

Between *A.B.* .. .. Plaintiff,

and

*C.D.* and others .. .. Defendants.

Victoria, by the grace of God of the United Kingdom of Great  
Britain and Ireland Queen, Defender of the Faith.

To the sheriff of      greeting.

We command you that of the goods and chattels of *C.D.* in your  
bailiwick you cause to be made the sum of      £. and also interest  
thereon at the rate of      £. per centum per annum from the  
day of      (s) which said sum of money and interest were lately  
before us in our High Court of Justice in a certain action [or certain  
actions, *as the case may be*] wherein *A.B.* is plaintiff and *C.D.* and  
others are defendants [or in a certain matter there depending intituled  
“In the matter of *E.F.*” *as the case may be*] by a judgment [or order,  
*as the case may be*] of our said Court, bearing date the      day of  
adjudged [or ordered, *as the case may be*] to be paid by the  
said *C.D.* to *A.B.*, together with certain costs in the said judgment  
[or order, *as the case may be*] mentioned, and which costs have been  
taxed and allowed by one of the taxing masters of our said Court at  
the sum of      £. as appears by the certificate of the said taxing  
master, dated the      day of      . And that of the goods and  
chattels of the said *C.D.* in your bailiwick you further cause to be

(s) Day of the judgment or order,  
or day on which money directed to be  
paid, or day from which interest is

directed by the order to run, as the  
case may be.



**Fieri Facias.** made the said sum of        £. [costs] together with interest thereon at the rate of 4l. per centum per annum from the        day of        , (t) and that you have that money and interest before us in our said Court immediately after the execution hereof to be paid to the said *A.B.* in pursuance of the said judgment [*or order, as the case may be*]. And in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution thereof. And have there then this writ.

Witness, &c.

## 2. Writ of Elegit.

187 . B. No.

**Elegit.**

In the High Court of Justice.

Division.

Between *A.B.* .. .. . Plaintiff,

and

*C.D.* and others .. .. . Defendants,

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To the sheriff of        greeting.

Whereas lately in our High Court of Justice in a certain action [*or actions, as the case may be*] there depending, wherein *A.B.* is plaintiff and *C.D.* and others are defendants [*or in a certain matter there depending, intituled "In the matter of E.F.," as the case may be*] by a judgment [*or order, as the case may be*] of our said Court made in the said action [*or matter, as the case may be*], and bearing date the day of        , it was adjudged [*or ordered, as the case may be*] that *C.D.* should pay unto *A.B.* the sum of        £., together with interest thereon after the rate of        l. per centum per annum from the        day of        , together also with certain costs as in the said judgment [*or order, as the case may be*] mentioned, and which costs have been taxed and allowed by        one of the taxing masters of our said Court, at the sum of        £. as appears by the certificate of the said taxing master, dated the        day of        . And afterwards the said *A.B.* came into our said Court, and according to the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said *C.D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick as the said *C.D.*, or any one in trust for him, was seised or possessed of on the        day of        in the year of our Lord        (u), or at any time afterwards, or over which the said *C.D.* on the said        day of        or at any time afterwards had any disposing power which he might without the

(t) The date of the certificate of taxation. The writ must be so moulded as to follow the substance

of the judgment or order.

(u) The day on which the judgment or order was made.



assent of any other person exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of       *l.* and       *l.* together with interest upon the said sum of       *l.*, at the rate of       *l.* per centum per annum from the said       day of       and on the said sum of       *l.* (costs) at the rate of 4*l.* per centum per annum from the       day of       shall have been levied. Therefore we command you that without delay you cause to be delivered to the said *A.B.* by a reasonable price and extent all the goods and chattels of the said *C.D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands and tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C.D.*, or any person or persons in trust for him was or were seised or possessed of on the said       day of       (*x*) or at any time afterwards, or over which the said *C.D.* on the said       day of       (*x*), or at any time afterwards had any disposing power which he might without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said *A.B.*, as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns until the said two several sums of       *l.* and       *l.* together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us in our Court aforesaid, immediately after the execution thereof, under your seals, and the seals of those by whose oath you shall make the said extent and appraisement. And have there then this writ.

Witness ourselves at Westminster, &c.

### 3. *Writ of Venditioni Exponas.*

1875. B. No.

Venditioni  
Exponas.

In the High Court of Justice.

Division.

Between *A.B.*       ..       ..       ..       .. Plaintiff,  
and

*C.D.* and others       ..       ..       .. Defendants.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To the sheriff of       greeting.

Whereas by our writ we lately commanded you that of the goods and chattels of *C.D.* [*here recite the fieri facias to the end*]. And on the       day of       you returned to us in the       Division of our High Court of Justice aforesaid, that by virtue of the said writ to you

(*x*) The day on which the decree or order was made.



directed you had taken goods and chattels of the said *C.D.* to the value of the money and interest aforesaid, which said goods and chattels remained in your hands unsold for want of buyers. Therefore, we being desirous that the said *A.B.* should be satisfied his money and interest aforesaid, command you that you expose to sale and sell, or cause to be sold, the goods and chattels of the said *C.D.* by you in form aforesaid taken, and every part thereof, for the best price that can be gotten for the same, and have the money arising from such sale before us in our said Court of Justice immediately after the execution hereof, to be paid to the said *A.B.* And have there then this writ.

Witness ourself at Westminster, the            day of            in the year of our reign.

4. *Writ of Fieri Facias de Bonis Ecclesiasticis.*

1875. B. No.

*Fieri Facias* In the High Court of Justice.  
*de bonis Ecc.* Division.

Between *A.B.* .. .. . Plaintiff,  
and  
*C.D.* and others .. .. . Defendants.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To the Right Reverend Father in God [*John*] by Divine permission Lord Bishop of greeting: We command you, that of the ecclesiastical goods of *C.D.*, clerk in your diocese, you cause to be made            *l.* which lately before us in our High Court of Justice in a certain action [*or certain actions, as the case may be*] wherein *A.B.* is plaintiff and *C.D.* is defendant [*or in a certain matter there depending, intituled "In the matter of E.F." as the case may be*], by a judgment [*or order, as the case may be*] of our said Court bearing date the            day of           , was adjudged [*or ordered, as the case may be*] to be paid by the said *C.D.* to the said *A.B.*, together with interest on the said sum of            at the rate of            *l.* per centum per annum, from the            day of            and have that money, together with such interest as aforesaid, before us in our said Court immediately after the execution hereof, to be rendered to the said *A.B.*, for that our sheriff of            returned to us in our said Court on            [*or "at a day now passed"*] that the said *C.D.* had not any goods or chattels or any lay fee in his bailiwick whereof he could cause to be made the said            *l.* and interest aforesaid or any part thereof, and that the said *C.D.* was a beneficed clerk (to wit) rector of rectory [*or vicar of the vicarage*] and parish church of            in the said sheriff's county, and within your diocese [*as in the return*], and in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution hereof, and have you there then this writ. Witness ourself at Westminster, the            day of            in the year of our Lord



5. *Writ of Fieri Facias to the Archbishop de Bonis Ecclesiasticis during the vacancy of a Bishop's See.*

Victoria [&c., as in the preceding form]: To the Right Reverend Father in God [John] by Divine Providence Lord Archbishop of Canterbury, Primate of all England and Metropolitan, greeting: We command you, that of the ecclesiastical goods of C.D., clerk in the diocese of            which is within the province of Canterbury, as ordinary of that church, the episcopal see of            now being vacant, you cause to be made [&c., conclude as in the preceding form].

6. *Writ of Sequestrari Facias de Bonis Ecclesiasticis.*

1875. B. No.

Sequestration.

In the High Court of Justice.

Division.

Between A.B.    ..    ..    ..    .. Plaintiff,

and

C.D. and others    ..    ..    .. Defendants.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To the Right Reverend Father in God [John] by Divine permission Lord Bishop of            greeting: Whereas we lately commanded our sheriff of            that he should omit not by reason of any liberty of his county, but that he should enter the same and cause [to be made, if after the return to a fieri facias, or delivered, if after the return to an elegit, &c., and in either case recite the former writ.] And whereupon our said sheriff of            on [or "at a day past"] returned to us in the            division of our said Court of Justice, that the said C.D. was a beneficed clerk; that is to say, rector of the rectory [or vicar of the vicarage] and parish church of            in the county of           , and within your diocese, and that he had not any goods or chattels, or any lay fee in his bailiwick [here follow the words of the sheriff's return.] Therefore, we command you that you enter into the said rectory [or vicarage] and parish church of           , and take and sequester the same into your possession, and that you hold the same in your possession until you shall have levied the said            l. and interest aforesaid, of the rents, tithes, rentcharges in lieu of tithes, oblations, obventions, fruits, issues, and profits thereof, and other ecclesiastical goods in your diocese of and belonging to the said rectory [or vicarage] and parish church of            and to the said C.D. as rector [or vicar] thereof to be rendered to the said A.B., and what you shall do therein make appear to us in our said Court immediately after the execution hereof, and have you there then this writ. Witness ourself at Westminster, the            day of            in the year of our Lord



7. *Writ of Possession.*

187 . B. No.

Possession. In the High Court of Justice.  
Division.

Between *A.B.* .. .. Plaintiff,  
and  
*C.D.* and others .. .. Defendants.

Victoria, to the sheriff of , greeting: Whereas lately in our High Court of Justice, by a judgment of the Division of the same Court [*A.B.* recovered] or [*E.F.* was ordered to deliver to *A.B.*] possession of all that with the appurtenances in your bailiwick: Therefore, we command you that you omit not by reason of any liberty of your county, but that you enter the same, and without delay you cause the said *A.B.* to have possession of the said land and premises with the appurtenances. And in what manner you have executed this our writ make appear to the Judges of the Division of our High Court of Justice immediately after the execution hereof, and have you there then this writ. Witness, &c.

8. *Writ of Delivery.*

187 . B. No.

Delivery. In the High Court of Justice.  
Division.

Between *A.B.* .. .. Plaintiff,  
and  
*C.D.* and others .. .. Defendants.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of greeting: We command you, that without delay you cause the following chattels, that is to say [*here enumerate the chattels recovered by the judgment for the return of which execution has been ordered to issue*], to be returned to *A.B.*, which the said *A.B.* lately in our recovered against *C.D.* [*or C.D.* was ordered to deliver to the said *A.B.*] in an action in the Division of our said Court. And we further command you, that if the said chattels cannot be found in your bailiwick, you distrain the said *C.D.* by all his lands and chattels in your bailiwick, so that neither the said *C.D.* nor any one for him do lay hands on the same until the said *C.D.* render to the said *A.B.* the said chattels; and in what manner you shall have executed this our writ make appear to the judges of the Division of our High Court of Justice, immediately after the execution hereof, and have you there then this writ. Witness, &c.



The Like, but instead of a Distress until the Chattel is returned, commanding the Sheriff to levy on Defendant's Goods the assessed Value of it.

[*Proceed as in the preceding form until the \*, and then thus:*] And we further command you, that if the said chattels cannot be found in your bailiwick, of the goods and chattels of the said *C.D.* in your bailiwick you cause to be made *l. [the assessed value of the chattels]*, and in what manner you shall have executed this our writ make appear to the judges of the Division of our High Court of Justice at Westminster, immediately after the execution hereof, and have you there then this writ. Witness, &c.

### 9. Writ of Attachment.

187 . B. No. Attachment.

In the High Court of Justice.

Division.

Between *A.B.* .. .. Plaintiff,  
and  
*C.D.* and others .. .. Defendants.

Victoria, &c.

To the sheriff of greeting.

We command you to attach *C.D.* so as to have him before us in the Division of our High Court of Justice wheresoever the said Court shall then be, there to answer to us, as well touching a contempt which he it is alleged hath committed against us, as also such other matters as shall be then and there laid to his charge, and further to perform and abide such order as our said Court shall make in this behalf, and hereof fail not, and bring this writ with you. Witness, &c.

### 10. Writ of Sequestration.

187 . B. No. Sequestration.

In the High Court of Justice.

Division.

Between *A.B.* .. .. Plaintiff,  
and  
*C.D.* and others .. .. Defendants.

Victoria, &c.

To [*names of not less than four Commissioners*] greeting.

Whereas lately in the Division of our High Court of Justice in a certain action there depending, wherein *A.B.* is plaintiff, and *C.D.* and others are defendants, [*or, in a certain matter then depending, intituled "In the matter of E.F.," as the case may be,*] by a judgment [*or order, as the case may be,*] of our said Court made in the said action [*or matter*], and bearing date the day of 187 , it was



ordered that the said *C.D.* should [pay into Court to the credit of the said action the sum of *l.*, or, as the case may be]. Know ye, therefore, that we, in confidence of your prudence and fidelity, have given, and by these presents do give to you, or any three or two of you, full power and authority to enter upon all the messuages, lands, tenements, and real estate whatsoever of the said *C.D.*, and to collect, receive, and sequester into your hands not only all the rents and profits of his said messuages, lands, tenements, and real estate, but also all his goods, chattels, and personal estates whatsoever; and therefore we command you, any three or two of you, that you do at certain proper and convenient days and hours, go to and enter upon all the messuages, lands, tenements, and real estates of the said *C.D.*, and that you do collect, take, and get into your hands not only the rents and profits of his said real estate, but also all his goods, chattels, and personal estate, and detain and keep the same under sequestration in your hands until the said *C.D.* shall [pay into Court to the credit of the said action the sum of *l.*, or, as the case may be,] clear his contempt, and our said Court make other order to the contrary. Witness, &c.



SECOND SCHEDULE.

Session and Chapter.	Title.	Extent of Repeal.
6 Geo. 4, c. 84 . .	An Act to provide for the augmenting the salaries of the Master of the Rolls and the Vice-Chancellor of England, the Chief Baron of the Court of Exchequer, and the Puisne Judges and Barons of the Courts in Westminster Hall, and to enable His Majesty to grant an annuity to such Vice-Chancellor, and additional annuities to such Master of the Rolls, Chief Baron, and Puisne Judges and Barons on their resignation of their respective offices.	Section seven
32 & 33 Vict. c. 71	The Bankruptcy Act, 1869 .	Section one hundred and sixteen from "provided that at any time," inclusive, to end of the section.
32 & 33 Vict. c. 83	The Bankruptcy Repeal and Insolvent Court Act, 1869.	Section nineteen from "provided that at any time," inclusive, to end of the section.
36 & 37 Vict. c. 66	Supreme Court of Judicature Act, 1873.	So much of sections three and sixteen as relates to the London Court of Bankruptcy, section six, section nine, section ten, so much of section thirteen as relates to additional judges of the Court of Appeal, section thirty-four from "all matters pending in the London Court of Bankruptcy" to "London Court of Bankruptcy," section thirty-five, section forty-eight, section fifty-three, section sixty-three, section sixty-eight, section sixty-nine, section seventy, section seventy-one, section seventy-two, section seventy-three, section seventy-four, and the whole of the schedule.



## CHAPTER VI.

## FORMS OF PLEADINGS.

ACCOUNTS WITH TRUSTEES.	GUARANTEE.
ANNUITY.	INSURANCE.
ARBITRATIONS.	LANDLORD AND TENANT.
ASSAULT.	MALICIOUS PROSECUTION.
ATTORNEYS.	MASTER AND SERVANT.
BANKERS.	MINES AND MINERALS.
BILLS OF EXCHANGE.	NEGLIGENCE.
BONDS.	NUISANCE.
CARRIERS.	SEDUCTION.
CONVERSION OF GOODS.	TRESPASS.
DISTRESS.	WARRANTY.
EXCHANGE.	WORK AND LABOUR.

THE provisions of the Supreme Court of Judicature Act, 1873, so far as they relate to pleadings, have been superseded by the Supreme Court of Judicature Act, 1875, and the Orders and Rules of Court annexed to and made in pursuance of the latter Act (*a*).

We have already set out the forms of pleadings provided in Appendix C. of the Judicature Act, 1875 (*b*), and it has been thought desirable to give a few additional forms. These forms are prepared in conformity with the provisions of the Acts, although some observations previously made by us may be useful (*c*).

We may, however, observe that these additional forms of pleadings, for which the author alone is responsible, relate to transactions of every-day life, and they have the

(*a*) 38 & 39 Vict. c. 77, ss. 16-24 ;  
ante, pp. 171-178 ; Orders xix.-xxvii. ;  
ante, pp. 189, 227-251.

(*b*) Ante, pp. 333-385.  
(*c*) See ante, pp. 189, 227-235  
309.



advantage of conveying to the pleader some notion of the causes of action which may now be given together in the same action (*d*), as well as the various defences which may be set up in answer to the claim (*e*).

We must further remind the pleader that the various forms of pleadings in the Common Law Courts under the names of declaration pleas, replication, rejoinder, sur-rejoinder, rebutter, and sur-rebutter, as well as bill of complaint, answer, and pleas in the Chancery Courts, have been abolished, and in their places are substituted only four forms of pleading applicable to all the Courts, viz., statement of claim, answer, reply, and joinder of issue (*f*). Demurrers, however, are allowable (*g*), and pleadings may be amended (*h*), and in certain cases abandoned altogether (*i*); but when amended, even if amounting in substance and effect to the old pleadings following pleas, they are now marked "amended" (*k*), and constitute part of the original pleadings, so as to be included under one or the other of the only forms of pleading now recognised under the Supreme Court of Judicature Acts, 1873 and 1875.

But as pleadings, when amended, will amount in substance and effect to some of the old pleadings, other than those now allowed, we have in a subsequent portion of this work (*l*), given an analysis of the principal proceedings and steps which have hitherto prevailed both in a Chancery suit and an action at law. This analysis will serve as a guide to the various amendments which will be permitted under the new rules of pleading, and the times within which the amendments should be made. The analysis will also be useful in shewing the various alterations which have been made in the form and substance of pleadings generally (*l*).

(*d*) See ante, p. 225.

(*e*) See ante, p. 239.

(*f*) See ante, pp. 227, 233, 237, 239, 242.

(*g*) See ante, p. 245.

(*h*) See ante, p. 243.

(*i*) See ante, p. 241.

(*k*) See ante, p. 245.

(*l*) See post, chap. x.



*Writ of Summons.*

This form will be found in Appendix A., Part I., Forms 1, 2, 4 (m).

*General Indorsements.*

These will be found in Appendix A., Part II., Section I., Forms 1-9 (n).

*Notice by Defendants to Third Party.*

This will be found in Appendix B., Form 1 (o), but though applicable to all actions, will be used much more frequently in the Common Law Divisions than in the Chancery Division of the High Court of Justice.

ACCOUNT  
WITH  
TRUSTEES.

In the High Court of Justice  
Chancery Division.

Writ issued 3rd August, 1876.

Between A.B., plaintiff,  
and  
C.D., defendant.

*Statement of Claim.*

Claim.

1. The plaintiff is a merchant carrying on business at Liverpool, and the defendant is a solicitor of the Supreme Court, carrying on his business in London.

2. On the 8th March, 1866, M.N. and O.P. were married, and by a deed of settlement bearing date and executed the day before the said marriage, the property of the said O.P. was conveyed to trustees for her separate use during coverture and for other purposes. The defendant and Q.R. were the original trustees under this settlement, which contained the usual powers for the appointment of new trustees.

3. The defendant acted as trustee, the said Q.R. taking no part therein, and on his death, in 1868, the plaintiff was appointed co-trustee with the defendant.

4. The defendant from that time hitherto has had the whole management of the trust estate, and the plaintiff has taken no part therein; the plaintiff is entirely ignorant of the property comprised in the said trust, as the said settlement does not mention the amount of the said property or describe it, but merely mentions it as the property to which the said O.P. was entitled under certain wills.

5. The defendant is and has been for some time the surviving executor under the said wills, and has all the property affected by them under his own control.

6. The plaintiff has for some time wished to know his own position under the said deed of settlement, and has repeatedly applied to the defendant for a list of the property now comprised in the said deed of

(m) Ante, pp. 310-312. (n) Ante, pp. 314, 315. (o) Ante, p. 326.



settlement, and information as to its amount, in what manner and in whose names it now stands, and what has been done with it since the plaintiff first became trustee. The defendant has persistently refused to give him any information on the subject.

The plaintiff claims:—

That the defendant may be directed to furnish him with a full and particular account of the property comprised in the settlement, how much there is, and what has been done with it.

And such other and further relief as the nature of the case may require.

In the High Court of Justice.

ANNUITY.

Division.

Writ issued 1st December, 1875.

Between *A.B.*, plaintiff,

and

*C.D.*, defendant.

*Statement of Claim.*

1. The defendant by deed bearing date the 1st January, 1863, granted *Claim.* to the plaintiff an annuity or yearly sum of 100*l.* payable quarterly on the 25th of March, the 24th of June, the 29th of September, and the 25th of December in every year for and during the life of the plaintiff.

2. The defendant has not paid any of the sums due to the plaintiff under and by virtue of the said deed since the 25th of December, 1873, and there are now due to the plaintiff seven of the said quarterly payments, amounting to the sum of 175*l.*

3. The plaintiff claims 175*l.*, and also claims from the defendant interest at the rate of 5*l.* per cent. on the arrears of the said annuity.

[Title as before.]

*Defence.*

1. The defendant paid the said annuity each day that it became due down to and including the 24th of March, 1875.

2. On the 3rd of October, 1875, when 50*l.* was due from the defendant to the plaintiff on account of the said annuity, it was agreed between the plaintiff and the defendant that the defendant should, instead of paying the said 50*l.*, deliver to the plaintiff a certain horse belonging to the defendant.

3. On the 7th of October, 1875, in pursuance of the said agreement the defendant delivered to the plaintiff, and the plaintiff accepted from the defendant, the said horse in full satisfaction and discharge of the plaintiff's claim for any money then due on account of the said annuity.

[Title as before.]

*Reply.*

The plaintiff joins issue upon the defendant's statement of defence. *Reply.*



## ARBITRATION.

In the High Court of Justice.  
Division.

Writ issued 1st January, 1876.

Between *A.B.*, plaintiff,  
and  
*C.D.*, defendant.

*Statement of Claim.*

Claim.

1. For some time before making the agreement of reference herein-after mentioned there had been various disputes between the plaintiff and defendant.

2. On the 3rd of February, 1874, by an agreement dated on that day, the plaintiff and defendant agreed that all the matters in difference between them should be referred to the arbitration of *X.Y.*, and that the plaintiff and defendant would abide and be bound by and keep and perform the said award, and that the costs of the said reference and award should be in the discretion of the said *X.Y.*

3. The said *X.Y.* took upon himself the said award, and afterwards, on the 20th day of June, 1874, made and published his said award in writing, and thereby awarded that *l.* were due from the defendant to the plaintiff, and directed that the defendant should pay to the plaintiff the said *l.*, and also pay his own costs of the reference and the whole costs of the award, and should pay to the plaintiff his costs of the reference.

4. The plaintiff took up the said award and paid the costs thereof, amounting to *l.*, and the plaintiff's costs of the reference amounted to *l.* Yet the defendant did not pay to the plaintiff the sum of *l.* so awarded to be paid to him as aforesaid nor the said sum of *l.*, being the plaintiff's costs of the reference, nor the said *l.*, being the costs of the award.

5. The plaintiff claims the sum of *l.*, being the amount of the said sums of *l.* and *l.* and *l.* respectively.

## ASSAULT.

In the High Court of Justice.  
Division.

Writ issued 3rd August, 1876.

Between *A.B.*, plaintiff,  
and  
*C.D.*, defendant.

*Statement of Claim.*

Claim.

1. The plaintiff, on the 18th June, 1875, was walking along Cheap-side when he was stopped by the defendant and some other persons, who were standing together and talking loudly. He asked the defendant to allow him to pass, when the defendant turned round, raised his fist, struck him a blow on his mouth and knocked him down.



2. In consequence of the blow and the fall, two of the plaintiff's teeth were knocked out, his arm was bruised, and he was very much hurt and shaken ; he was unable to attend to his business, and sustained loss and damage thereby, and incurred considerable expense for medical and surgical attendance.

The plaintiff claims                      l. damages.

[Title.]

*Statement of Claim.*

1. The defendant says he was standing quietly in Cheapside talking Defence. to some friends, when the plaintiff came up suddenly and ran against him violently, desiring him to make way. In consequence of the plaintiff's violence the defendant was compelled to push against him slightly in self-defence, which push caused the plaintiff to fall, and save as afore-said, the defendant denies that he ever assaulted the plaintiff.

2. The defendant does not admit the statement in the second paragraph of the plaintiff's statement of claim.

[Title.]

*Reply.*

The plaintiff joins issue upon the defendant's statement of defence.      Reply.

In the High Court of Justice.

ATTORNEYS.

Division.

Writ issued 8th September, 1876.

Between *A.B.*, plaintiff,

and

*C.D.*, defendant.

*Statement of Claim.*

1. The plaintiff on the                      day of                      , 1876, retained the de- Claim. fendant, a solicitor of the Supreme Court of Justice, to conduct an action in the Queen's Bench Division of the High Court of Justice at the suit of the plaintiff against one *X.Y.*

2. The defendant accepted such retainer, and it thereupon became his duty to conduct the said action with due and proper care, skill, and diligence, and to cause the due attendance of all witnesses necessary to prove the plaintiff's case.

3. It was necessary and proper to call one *M.N.*, as and for a witness on the plaintiff's behalf in the said action, yet the defendant negligently omitted to issue a subpoena for the attendance of the said *M.N.*, or to cause him to attend.

4. In consequence of the said negligence of the defendant, the said *M.N.* did not attend the said trial, and owing to the non-attendance of the said *M.N.* the plaintiff was unable to prove his case, which he other-



wise would have done, and was thereby obliged to suffer himself to be nonsuited, and lost the costs and expenses he had incurred in prosecuting the said action, and was compelled to pay a large sum of money to the said *X.Y.* for and on account of his costs in the said action.

5. The plaintiff was delayed and hindered in recovering the sum of 100*l.* for which he had brought the said action against the said *X.Y.*, and is likely altogether to lose the same.

6. The plaintiff claims the sum of *l.*, being the amount of his own costs and expenses, the amount he had to pay to the said *X.Y.* for his costs, and the said 100*l.* he otherwise would have recovered from the said *X.Y.*

[Title.]

*Answer.*

*Statement of Defence.*

*Answer.* 1. The plaintiff had no good cause of action against the said *X.Y.*, and could under no circumstances have recovered a verdict against him, and therefore sustained no damage from the non-attendance of the said *M.N.*

2. The defendant had no means of knowing that the said *M.N.* had any knowledge of the matters in dispute between the plaintiff and the said *X.Y.*, except from the information communicated to him from the plaintiff, and the plaintiff never told him that the said *M.N.* would be able to give any evidence in the said action till the day before the said action was tried, when it was too late for the defendant to subpoena the said *M.N.*

3. The plaintiff more than once told the defendant not to incur more expense than was absolutely necessary in conducting the said cause, and told him not to issue subpoenas to the witnesses intended to be called, as they were all friends of the plaintiff, and would attend and give evidence for him without being subpoenaed for that purpose.

[Title.]

*Reply.*

*Reply.* 1. The plaintiff joins issue upon the defendant's statement of defence.

2. With respect to the third paragraph of the defendant's statement of defence, the plaintiff says that when he told the defendant that his witnesses would attend the trial of the said cause without being subpoenaed, he expressly excepted the said *M.N.*, and told the defendant it would be necessary to subpoena the said *M.N.*

[Title.]

*Rejoinder.*

*Rejoinder.* The defendant joins issue on the second paragraph of the plaintiff's reply.



187 . B. No.

In the High Court of Justice.

BANKERS.

Division.

Writ issued 2nd August, 1876.

Between *A.B.*, plaintiff,  
and*C.D.* and *E.F.*, defendants.*Statement of Claim.*

1. The defendants during the year 1875 were carrying on business as Claim. bankers in the city of Bristol, and during that time acted as bankers for the plaintiff.

2. On the 4th January, 1875, while the defendants were bankers for the plaintiff as aforesaid, the plaintiff paid into the hands of the defendants, in the way of the said business, and for the purpose of being presented by them, a cheque for 75*l.* on a certain bank in London called the X. Bank, drawn in favour of the plaintiff by one *L.M.*

3. It thereupon became and was the duty of the defendants as such bankers to present the said cheque for payment with all due and reasonable expedition, and to forward it to London for the purpose of being presented to the said X. Bank not later than the 5th January.

4. The defendants negligently kept the said cheque in their possession till the 11th January without presenting it for payment.

5. The said X. Bank stopped payment on the 10th January, 1875, and the plaintiff thereby lost the sum for which the said cheque was drawn, and was put to inconvenience and expense in endeavouring to obtain the same, or some portion thereof, under the bankruptcy of the said X. Bank.

6. The plaintiff claims 100*l.*

[Title.]

*Statement of Defence.*

The plaintiff, after he paid the said cheque into the defendants' bank, Defence. and before they had had time to forward the same to London, wrote to the defendants and requested them not to present the said cheque for a week, stating it would be a week before the said *L.M.* would have any funds in the said X. Bank to meet the said cheque.

[Title.]

*Reply.*

The plaintiff joins issue on the defendants' statement of defence.

Reply.

[Title.]

*Statement of Claim*

Will be found in Form 7 in Appendix C. to the Judicature Act, BILL OF EXCHANGE.  
1875, *ante*, p. 345.



[Title.]

*Statement of Defence.*

Defence.

By way of set-off and counter-claim, the defendants claim as follows:—

1. One *M.N.* is a merchant carrying on business at Hong Kong, and the plaintiffs requested the defendants to accept any trade bills drawn by the said *M.N.* upon the defendants, and promised, if the defendants would do so, to indemnify them against any loss they might sustain.

2. The defendants, trusting in the said guarantee of the plaintiffs, did accept a great many bills drawn by the said *M.N.* upon them the defendants.

3. From time to time the said *M.N.* failed to provide funds to meet some of these bills, and the defendants were compelled to pay, and did pay, various sums of money to different persons being the holders of the said bills.

4. At the time of the commencement of this action there was a sum amounting to £ due from the said *M.N.* to the defendants on the said bills which he has not paid, and which the defendants are entitled to have paid to them from the plaintiffs.

The defendants claim £ damages in respect of the matters stated in their set-off and counter-claim (*p*).

[Title.]

*Reply.*

Reply.

1. The plaintiffs only gave the guarantee mentioned on the condition that the defendants, if requested by the said *M.N.*, should during the first year after the making of the said guarantee accept bills for the said *M.N.* to the amount of 1000£. each and every month; and the defendants, though often requested by the said *M.N.* to do so during the first year, failed to accept bills for him to that amount, and only accepted bills for him to an amount less than 500£. each month.

2. The said alleged guarantee of the plaintiffs being a promise to answer for the debt or liability of a third person was not in writing (*q*).

[Title.]

*Rejoinder.*

Rejoinder.

The defendants join issue on the plaintiffs' reply.

(*p*) The defendants can set up this counter-claim under 38 & 39 Vict. c. 77, Order xix., Rule 3, ante, p. 228, but it would not have been a matter

of set-off formerly: *Morley v. Inglis*, 4 Bing. N. C. 58.

(*q*) 38 & 39 Vict. c. 77, Order xix, Rule 23; ante, p. 231.



In the High Court of Justice.

Division.

POSD.

Writ issued 2nd August, 1876.

Between *A.B.*, plaintiff,

and

*C.D.*, defendant.

*Statement of Claim.*

1. The defendant by his bond dated the            day of            became Claim. bound to the plaintiff in the sum of 500*l.*

2. The said bond was subject to a condition thereunder written that if the defendant should keep his sheep when pastured in the plaintiff's close Blackacre from straying into any other part of the plaintiff's premises, the said bond should be void, and the defendant did not keep his sheep from straying when they were so pastured as aforesaid, but allowed them to stray into other parts of the plaintiff's premises.

3. The plaintiff claims 500*l.*

[Title.]

*Statement of Defence.*

1. The said sheep of the defendant were kept in the close Blackacre Defence. and did not stray, and were not allowed to stray on any other part of the plaintiff's premises.

[Title.]

*Reply.*

The plaintiff joins issue on the defendant's statement of defence.

Reply.

187 . B. No. .

In the High Court of Justice.

CARRIER.

Division.

Writ issued 3rd August, 1877.

Between *A.B.*, plaintiff,

and

*C.D.*, defendant.

*Statement of Claim.*

1. The defendant was a carrier of goods for hire from London to Claim. Birmingham, and on the 1st May, 1875, the plaintiff delivered to the defendant certain goods to be carried by the defendant for the plaintiff to Birmingham, to be there delivered to one *X.Y.*, at and for the price of            *l.*

2. The Defendant did not deliver the said goods to the said *X.Y.*, whereby the plaintiff lost the price and value of the said goods and was compelled to purchase others to send to the said *X.Y.*

The plaintiff claims 60*l.*



[Title.]

*Statement of Defence.*

Defence.

1. The defendant did take the said goods to the said X.Y., and offered to deliver them to him, but the said X.Y., refused to accept them, stating that they were not the goods he had ordered of the plaintiff.

2. The defendant gave the plaintiff notice that the said X.Y. refused to accept the said goods, and told the plaintiff that he was ready and willing to re-deliver them to the plaintiff on being paid his lawful costs and charges in that behalf, but the plaintiff did not take the said goods, or pay the said charges.

[Title.]

*Reply.*

Reply.

The plaintiff joins issue on the defendant's statement of defence.

CONVERSION  
OF GOODS.

In the High Court of Justice.

Division.

Writ issued 3rd August, 1876.

Between A.B., plaintiff,

and

C.D., defendant.

*Statement of Claim.*

Claim.

1. The plaintiff was possessed of a grand piano, which he deposited for safe custody in a warehouse of the defendant for hire and reward to the defendant, and on the terms that it should be returned to the plaintiff when he required it.

2. While the said piano was in the defendant's custody the defendant sold it to some third person, and has not returned it to the plaintiff, but has refused to return it, though often requested so to do.

The plaintiff claims 200*l.* damages.

[Title.]

*Statement of Defence.*

Defence.

1. The defendant denies that the said piano was deposited with him for hire and reward.

2. The piano was deposited with him as security for the sum of 100*l.* owing to him by the plaintiff, and on the terms that if the said 100*l.* was not repaid to him on the 1st December, 1874, he might sell it for the best price he could get, and reimburse himself out of the proceeds, paying the surplus to the plaintiff, if any remained after satisfying himself and paying all necessary expenses.

3. The plaintiff did not pay him the said 100*l.* on the said 1st December, or on any other day, and on the 15th December he sold the said piano, but was only able to get 75*l.* for it, and the expenses of the said sale amounted to 3*l.*



4. By way of counter-claim the defendant claims as follows : 25*l.*, a balance due to the defendant out of 100*l.* originally due from the plaintiff to the defendant for money lent by the defendant to the plaintiff.

5. The defendant also claims 3*l.* for expenses incurred by him in selling the said piano under the circumstances stated in the second and third paragraphs.

The defendant claims 28*l.* in respect of the matters claimed in this counter-claim.

[Title.]

*Reply.*

1. The plaintiff joins issue on the first, second, and third paragraphs Reply. of the defendant's statement of defence.

2. With respect to the statements in the second and third paragraphs of the defence, the plaintiff says that the agreement between them was that the said piano was not to be sold till the 1st January, 1875, and that before that day, viz., some time in December, 1874, he tendered to the defendant, and was ready and willing to pay to him, all that was due in respect of the alleged loan.

3. With respect to the statement in the third paragraph of the statement of defence, the plaintiff says that the said piano was worth 200*l.*, and there were many persons who, to the defendant's knowledge, were ready and willing to give sums varying from 150*l.* to 200*l.* for it, and the defendant might easily have obtained at least 150*l.* for it, but nevertheless he wilfully and recklessly sacrificed it by selling it for only 75*l.*

4. With respect to the statement of counter-claim in the fourth and fifth paragraphs of the defendant's statement of claim, the plaintiff says that at the time when the said piano was sold he only owed the defendant 50*l.*, and not 100*l.*

[Title.]

*Rejoinder.*

The defendant joins issue upon the second, third, and fourth paragraphs in the plaintiff's reply. Rejoinder.

In the High Court of Justice.

Division.

Writ issued 3rd August, 1875.

Between *A.B.*, plaintiff,

and

*C.D.*, defendant.

*Statement of Claim.*

1. The plaintiff was yearly tenant to the defendant of a house situate Claim.



at , on the terms that the rent was to be paid half yearly, that is to say, at Midsummer and Christmas.

2. The plaintiff, on the 1st January, 1875, paid the half year's rent then due, and there was none in arrear; nevertheless, on the 3rd April, 1875, the defendant wrongfully distrained the plaintiff's goods in the said house as a distress for pretended arrears of the said rent, and sold the said goods to satisfy the said wrongful distress, although at the time there was no rent whatever due in respect of the said house.

The plaintiff claims                      1. as damages.

[Title.]

*Statement of Defence.*

**Defence.**            1. The said house was not let on the terms that the said rent should be paid half yearly, but that it should be paid quarterly on the usual quarter days.

2. When the said distress was made one quarter's rent was in arrear, and had been in arrear since Lady Day, 1875, and this was a rent for which the defendant had a right to distrain.

*Reply.*

**Reply.**            The plaintiff joins issue on the defendant's statement of defence.

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**EXCHANGE.**        In the High Court of Justice.  
Division.

Writ issued 3rd August, 1876.

Between *A.B.*, plaintiff,  
and

*C.D.*, defendant.

*Statement of Claim.*

**Claim.**            1. The plaintiff was possessed of 100 hogsheads of port, and the defendant of 100 hogsheads of sherry, and it was agreed between the plaintiff and defendant that in consideration that the plaintiff would deliver the said 100 hogsheads of port to the defendant, the defendant would accept the same and deliver to the plaintiff the said 100 hogsheads of sherry in exchange thereof.

2. The plaintiff delivered the said 100 hogsheads of port to the defendant, and was always ready and willing to accept and receive the said 100 hogsheads of sherry from the defendant, but the defendant did not deliver the same.

The plaintiff claims                      1.



[Title.]

*Statement of Defence.*

1. The defendant says that it was one of the terms of the said agree- Defence.  
ment that the said port belonging to the plaintiff and to be delivered  
to the defendant was of the vintage of 1824; and the plaintiff did not  
deliver to the defendant port of the said vintage, but a wine made in  
1870, of much less value.

2. When the defendant discovered the quality of the wine sent him  
by the plaintiff, he refused to keep the same, and requested the plaintiff  
to take it back, which the plaintiff failed to do.

[Title.]

*Reply.*

The plaintiff joins issue on the defendant's statement of defence. Reply.

[Title.]

*Statement of Claim*

Will be found in Form 16 in Appendix C. to the Judicature Act, GUARANTEE.  
1875, ante, p. 367.

[Title.]

*Statement of Defence.*

1. The plaintiffs induced the defendants to make the said guarantee Defence.  
by falsely and fraudulently representing to them that the said *M.N.*  
was a person of good character, and that they had received from his  
former masters, Messrs. *R. & S.*, a good account of his conduct while  
he was in their employment, whereas he had been dismissed from the  
employment of the said Messrs. *R. & S.* for defalcations in his accounts,  
of which the plaintiffs were informed by the said Messrs. *R. & S.*

2. The plaintiffs also informed the defendants, at the time of their  
making the said guarantee, that it was the usual course of their  
business to make their collector balance his accounts and account to  
them for his receipts every month, and that the said *M.N.* would have  
to render such accounts every month; whereas, after the engagement  
of the said *M.N.*, and without the defendants' knowledge, they changed  
their course of business in that behalf, and only called on the said  
*M.N.* to balance his accounts and render an account of his receipts once  
in six months, and in consequence of such alteration in the manner of  
carrying on the plaintiff's business the said *M.N.* was enabled to  
appropriate the said sums to his own use.

[Title.]

*Reply.*

The plaintiffs join issue on the defendants' statement of defence. Reply.



INSURANCE.

In the High Court of Justice.

Division.

Writ issued 8rd August, 1876.

Between *A.B.*, plaintiff,

and

The *C. Company*, defendants.*Statement of Claim.*

Claim.

1. The plaintiff resides in a certain house, No.            Street, London, and the defendants are a joint stock company formed for the purpose of insuring against fire.

2. By a policy bearing date the            day of            in the year            , the plaintiff insured for the sum of            £. all his furniture and other goods in the said house against fire for one year, and from year to year, on condition of paying to the defendants the sum of            £. in each and every year on the            day of            .

3. By the said policy the defendants promised to insure the said furniture and goods of the plaintiff from all damages and loss from fire during the continuance of the same.

4. The said policy was issued subject to the following conditions indorsed on the same, that is to say :—

*[Here copy the conditions.]*

5. The plaintiff kept the said policy in force by paying each year the sum of            £. to the defendants in that behalf.

6. On the            day of            1876, and while the said policy was in force, a fire broke out in the said house, and the said furniture and other goods of the plaintiff were burnt, damaged, and destroyed by fire. The plaintiff gave the defendants notice of the same within            days, in accordance with the conditions of the said policy, and performed all conditions necessary to be performed on his part to entitle him to be paid by the defendants and indemnified by them for the loss so sustained, and nothing happened to prevent his being so entitled.

7. The defendants have not paid to the plaintiff the loss and damage he has sustained in consequence of the said fire on any portion thereof.

The plaintiff claims 1000£.

*[Title.]*

*Statement of Defence.*

Defence.

1. The plaintiff, at the time when the fire occurred, was not the owner of the said furniture or goods, nor had he any insurable interest in them whatever.

2. The plaintiff did not, within            days after the said fire, give notice of the same to the defendants in compliance with the            th condition indorsed on the said policy.

3. After the said fire the plaintiff delivered to the defendants a false and fraudulent account of the damage alleged to have been sustained



by him in consequence of the said fire, by saying that the said loss and damage amounted to 950*l.*, whereas, in truth and in fact, as the plaintiff then well knew, the loss and damage he had sustained by the said fire did not amount to more than 230*l.*

*Reply.*

The plaintiff joins issue on the defendants' statement of defence. Reply.

In the High Court of Justice.

Division.

LANDLORD  
AND TENANT.

Writ issued, 3rd August, 1876.

Between *A.B.*, plaintiff,

and

*C.D.*, defendant.

*Statement of Claim.*

1. The plaintiff was and is owner of a certain house, No. 300, Cheapside, in the City of London, and let the same to the defendant for one year upon the term, among other things, that he should deliver up the said house to the plaintiff at the expiration of the said year in as good condition as it was at the commencement, reasonable wear and tear and any damage or accident caused by fire or tempest alone excepted.

2. The defendant took possession of the said house, and became tenant thereof to the plaintiff on the terms aforesaid.

3. At the expiration of the said year the defendant delivered the said house up to the plaintiff in a much worse state and condition than it was when he entered it, and far more deteriorated and out of repair than could be caused, or was caused, by reasonable wear and tear, though no damage or accident had been caused by fire or tempest.

The plaintiff claims 200*l.*

[Title.]

*Statement of Defence.*

1. The defendant did deliver the said house up to the plaintiff in as good state and condition as it was when he entered it, except so far as it had become damaged by reasonable wear and tear. Defence.

2. The said house was a very old one, and in a very bad state of repair when the defendant entered it, and in consequence of its old and ruinous condition it deteriorated far more from ordinary wear and tear than a new house or house in good condition would have done.

3. Part of the alleged damage (if any) caused to the said house was caused by a very violent tempest which took place on the day of



[Title.]

*Reply.*

**Reply.** The plaintiff joins issue on the defendant's statement of defence.

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MALICIOUS  
PROSECUTION.

In the High Court of Justice.  
Division.

Writ issued, 3rd August, 1875.

Between *A.B.*, plaintiff,

and

*C.D.*, defendant.*Statement of Claim.***Claim.**

1. The plaintiff is a market-gardener, and the defendant is a private gentleman owning premises near the defendant's market-garden.

2. The defendant, on the 1st August, 1874, alleging that he missed some peaches, appeared before one *X.Y.*, a justice of the peace, and there falsely and maliciously, and without any probable cause, charged the plaintiff with having stolen the said peaches, and by making such charge induced the said justice to issue a warrant for apprehending the plaintiff and bringing him before the said justice, to be dealt with by him according to law.

3. The justice granted the said warrant, and thereby caused the plaintiff to be arrested and brought before him in custody on the day of        to answer the said charge.

4. The defendant then appeared before the said justice and induced him to remand the plaintiff to prison, where he remained till the day of       , when he was again brought before the said justice, who having fully heard the charge made by the defendant against the plaintiff, dismissed the same, and the said prosecution was determined.

5. In consequence of such imprisonment the plaintiff suffered great loss and inconvenience, suffered in his health, was hindered and damaged in his business, and injured in his reputation, and was put to great expense in procuring his liberation from custody.

The plaintiff claims        *l.* as damages.

[Title.]

*Statement of Defence (r).***Defence.**

1. The defendant says that he had often forbidden the plaintiff to enter his premises; that on the        day of        he discovered the plaintiff on his premises and near his peach trees; that as soon as the plaintiff saw the defendant he ran away and dropped some peaches

(*r*) See 37 & 38 Vict. c. 77, Order xix., Rule 16, ante, p. 230, as to pleading "Not guilty by statute."



which were of the same kind and quality as those growing on the defendant's trees. In consequence of this the defendant honestly believed the plaintiff had stolen his peaches, and thereupon went before the said justice and stated the facts aforesaid, and the said justice on hearing the said facts issued a warrant for the apprehension of the plaintiff.

*Reply.*

The plaintiff joins issue on the defendant's statement of defence.

*Reply.*

In the High Court of Justice.  
Division.

MASTER AND  
SERVANT.

Writ issued, 3rd August, 1876.

Between *A.B.*, plaintiff,  
and  
*C.D.*, defendant.

*Statement of Claim.*

1. It was agreed between the plaintiff and the defendant that in con- *Claim.*  
sideration that the plaintiff would enter into the defendant's service on the 1st December, 1874, and serve him for one year as clerk at the salary of 100%, the defendant would receive him into his service and employment for the said year on the aforesaid terms.

2. The plaintiff on the said 1st December, 1874, was ready and willing to enter into the employment of the defendant as clerk, and offered so to do, but the defendant did not and would not take him into his service, but always refused so to do.

3. In consequence of the defendant's refusal, the plaintiff not only lost the benefit which would have accrued to him from entering into the defendant's employment, but remained a long time unemployed.

The plaintiff claims 100%.

[Title.]

*Statement of Defence.*

The said alleged agreement, if made at all, which the defendant *Defence.*  
denies, was made on the 15th November, 1874, and consequently was not to be, and could not be, performed within a year; it nevertheless was verbal, and not in writing (s).

*Reply.*

The plaintiff joins issue on the defendant's statement of defence.

*Reply.*

(s) 38 & 39 Vict. c. 77, Order xix., Rule 23; ante p. 231.



MINES AND  
MINERALS.

In the High Court of Justice.

Division.

Writ issued 3rd August, 1875.

Between *A.B.*, plaintiff,

and

*C.D.*, defendant.

*Statement of Claim (t).*

Claim.

1. The plaintiff is a farmer residing at \_\_\_\_\_, and possessed of several acres of pasture and of arable land. The defendant is the owner of a coal mine, a large portion of which is under the farm and land of the plaintiff.

2. The plaintiff worked his mines and dug and excavated them under the land of the plaintiff; he carried the said workings and excavations too near the surface, and did not leave a proper support for the plaintiff's land, and in consequence of such negligence on the part of the defendant the land of the plaintiff sank and gave way in divers places.

3. The plaintiff not only lost the use of the said land, but also lost certain crops then growing on it.

The plaintiff claims \_\_\_\_\_ as damages, also an injunction restraining the defendant from working the said mine so as to injure his land, and such further or other relief as the nature of the case may require (u).

NEGLIGENCE.

In the High Court of Justice.

Division.

Writ issued 3rd August, 1875.

Between *A.B.*, plaintiff,

and

The *C.D.* Railway Company, defendants.

*Statement of Claim.*

1. The defendants are a railway company possessed of a railway and of stations thereon to which the public are invited to come for the purpose of travelling on the said railway, and among other stations they have one at \_\_\_\_\_.

2. On the evening of the 7th December, 1874, the plaintiff came to the said station at \_\_\_\_\_ for the purpose of travelling on the defendants' railway from \_\_\_\_\_ to \_\_\_\_\_.

3. The plaintiff had taken a ticket for the said journey, and in order to take his seat in the train to proceed on his said journey, he was obliged to walk, and did walk, along the platform at the said station.

4. It was dark, and the platform, owing to the negligence of the

(t) See Rogers on Mines, 2nd ed., chap. 33., where several old forms of pleadings respecting mines, minerals, and quarries, will be found.

(u) See Rogers on Mines, 2nd ed.,



defendants, was insufficiently lighted. The defendants also, while the platform was insufficiently lighted, allowed divers trucks and barrows to remain on the said platform and on the part of the platform over which passengers had to pass to get into the train.

5. In consequence of the said negligence of the defendants, the plaintiff fell over a barrow on the said platform and broke his leg and suffered other injuries; he was hindered in carrying on his business, and suffered loss and damage thereby, and was put to expense in procuring medical attendance and in endeavouring to be cured of the injuries he had sustained.

The plaintiff claims                      1. damages.

[Title.]

*Statement of Defence.*

1. The defendants say that the whole part of the platform over which the passengers were obliged to pass, or ought to pass, was well and properly lighted, and there were no trucks or barrows on that part of the platform. Defence.

2. On the extreme end of the platform, where passengers had no necessity for going and where they ought not to go, there were various trucks and barrows stowed ready for use when required. In spite of being warned by the defendants' servants, and requested not to go there, the plaintiff persisted in walking on that part of the platform, and while walking there fell over one of the aforesaid trucks or barrows.

3. Even while the plaintiff was walking there, without any necessity and against the wishes and desires of the company, there was sufficient light for him to have seen the said trucks and barrows, and avoided them had he exercised ordinary care.

4. The defendants do not admit that the plaintiff sustained the injuries alleged to have been sustained by him in the fifth paragraph of his statement of claim.

[Title.]

*Reply.*

The plaintiff joins issue upon the defendant's statement of defence. Reply.

In the High Court of Justice.

Division.

Writ issued 3rd August, 1875.

Between A.B., plaintiff,

and

C.D., defendant.

*Statement of Claim.*

1. The plaintiff has a house and garden situate at \_\_\_\_\_, and the defendant is the owner of certain ground adjoining the plaintiff's garden, and very near his house. Claim.



2. The defendant erected and made a certain brick-kiln on his ground, and close to the house and garden of the plaintiff; he also burned and still burns a large quantity of bricks, and caused and causes a noxious and unwholesome vapour to arise which has injured and still injures the plaintiff's premises, and which had and still has the effect of rendering the plaintiff's house uncomfortable, unhealthy, and unfit for habitation.

The plaintiff claims                      1. damages.

He also claims an injunction restraining the defendant from burning any more bricks, and such further and other relief as the nature of the case may require.

[Title.]

*Statement of Defence.*

Defence.

1. The said brick-kiln is on the defendant's ground, at a considerable distance from the plaintiff's house and garden, and not near enough to cause the plaintiff any inconvenience or annoyance.

2. Even if the said brick-kiln was an inconvenience or annoyance to the plaintiff, which the defendant denies, he is not entitled to either damages or an injunction in respect thereof, as before the defendant commenced using his said brick-kiln and making the said bricks he applied to the plaintiff for permission to do so. Between the                      day of                      and the                      day of                      various letters passed between the plaintiff and the defendant on the subject, and it was finally agreed that the plaintiff would permit the defendant to use the said kiln and make the said bricks till the brick clay in the defendant's ground was exhausted, on the terms that the defendant would furnish the plaintiff, free of cost, with sufficient bricks to complete a greenhouse the plaintiff was then building in his garden; the defendant did supply the plaintiff with the said bricks free of cost, and the brick clay in the defendant's field is not yet exhausted.

[Title.]

*Reply.*

Reply.

The plaintiff joins issue on the defendant's statement of defence.

SEDUCTION.

In the High Court of Justice.

Division.

Writ issued 3rd August, 1875.

Between A.B., plaintiff,

and

C.D., defendant.

*Statement of Claim.*

Claim.

1. The plaintiff is a baker and confectioner, and Mary B., his daughter, lives in his house, is in his service, serves in his shop, and otherwise assists him in carrying on his business. The defendant is a tailor, and resides in the same street as the plaintiff.



2. The defendant seduced and had carnal connection with the said Mary B., in consequence of which she became pregnant with child, and the plaintiff was thereupon deprived of her services for a long time, and necessarily incurred great expense in nursing her and taking care of her, and procuring medical attendance in and about the delivery of her child.

The plaintiff claims            1. damages.

[Title.]

*Statement of Defence.*

1. The defendant never had carnal connection with the said Mary B. Defence.

2. Even if the defendant had connection with the said Mary B., which he denies, he says he was not the father of the said child, as she had had connection with divers other men, one of whom was the father of the said child.

3. Even if the defendant was the father of the said child, which he denies, he paid to the plaintiff, and the plaintiff accepted and received from the defendant, 20*l.* in full satisfaction and discharge of the damage sustained by the plaintiff in consequence of the loss of the said Mary B.'s services owing to her alleged seduction by the defendant.

[Title.]

*Reply.*

1. The plaintiff joins issue on the defendant's statement of defence. Reply.

2. With respect to the third paragraph in the defendant's statement of defence, the plaintiff says that the said 20*l.* was not paid to him on his own account in satisfaction and discharge of the damage he had sustained by the loss of the said Mary B.'s services, but paid to him as the agent of the said Mary B. in order to procure for her certain luxuries and comforts during her confinement (*x*).

[Title.]

*Rejoinder.*

The defendant joins issue on the second paragraph of the plaintiff's Rejoinder.  
reply.

In the High Court of Justice.

TRESPASS.

Division.

Writ issued 3rd August, 1875.

Between *A.B.*, plaintiff,

and

*C.D.*, defendant.

*Statement of Claim.*

1. The plaintiff has for some time been in lawful possession of a Claim.

(*x*) See 38 & 39 Vict. c. 77, Order xix., Rule 22; ante, p. 231.



house situate at \_\_\_\_\_, and of certain furniture and other goods in the said house.

2. On the 1st January, 1875, the defendant came with a great many persons, and, breaking open the plaintiff's door, violently forced his way into the plaintiff's house. While there he broke the windows and damaged other parts of the house, and threw all the furniture and goods of the plaintiff out of doors, and broke and damaged a great deal of it.

3. The defendant also forcibly drove and expelled the plaintiff and his family from the said house, and kept them out for a long time, putting the plaintiff to great inconvenience, and preventing his carrying on his business.

The plaintiff claims            l. damages.

[Title.]

*Statement of Defence.*

Defence.

1. The plaintiff was tenant to the defendant of the said house, and more than one year's rent of the said house was in arrear.

2. With respect to the second paragraph of the plaintiff's statement of claim, the defendant says that he did not break open the plaintiff's house, but finding the door opened he entered, as he lawfully might, to distrain for the rent in arrear, and afterwards removed some of the plaintiff's goods for the purpose of selling them under the said distress, in pursuance of the statutes in that case made and provided. In so doing the defendant was guilty of no violence, and did no unnecessary damage.

3. The defendant denies the allegations in the third paragraph of the plaintiff's statement of claim.

[Title.]

*Reply.*

Reply.

The plaintiff joins issue upon the defendant's statement of defence.

187 . B. No.

WARRANTY.

In the High Court of Justice.

Division.

Writ issued 3rd August, 1876.

Between *A.B.*, plaintiff,

and

*C.D.*, defendant.

*Statment of Claim.*

Claim.

1. The plaintiff agreed to purchase of the defendant, and the defendant agreed to sell to the plaintiff, 100 tons of rice at the price of    l. per ton, and by the said agreement the defendant warranted the said rice to be the best Carolina rice.



2. The plaintiff was ready and willing to receive the said rice, and to pay the agreed price, and every condition was fulfilled on his part necessary to entitle him to receive the said rice of the value and quality aforesaid.

3. The defendant did not deliver the rice to the plaintiff according to the said contract, but instead thereof delivered to the plaintiff rice which was not Carolina rice, but rice of an inferior quality, and the plaintiff was compelled to sell it at a great loss, and was deprived of the rice of the quality for which he had bargained, and to which he was entitled.

The plaintiff claims

[Title.]

*Statement of Defence.*

1. The defendant says that after the making the agreement mentioned in the first paragraph of the plaintiff's claim, and before the breach thereof, he told the plaintiff he should not be able to supply him with the said Carolina rice. Defence.

2. It was then agreed between the plaintiff and defendant, that if the defendant would supply to the plaintiff 100 tons of Patna rice at the price of 7. per ton, the plaintiff would accept the delivery of the said 100 tons of Patna rice instead of the Carolina rice mentioned in the first agreement, and the defendant delivered the plaintiff the said 100 tons of Patna rice in pursuance of the said second agreement, so substituted for the first as aforesaid.

[Title.]

*Reply.*

1. The plaintiff joins issue on the defendant's statement of defence. Reply.

2. With respect to the second paragraph of the defendant's statement of defence, the plaintiff says that he only consented to the substituted agreement therein mentioned on the express condition that the said 100 tons of Patna rice should be delivered on the 1st July, 1875, stipulating that if it were not delivered to him on that day, he should insist on the performance of the agreement now sued on, and the said rice was not delivered till the 4th August, 1875.

*Rejoinder.*

The defendant joins issue on the second paragraph of the plaintiff's reply. Rejoinder.

187 . B. No.

In the High Court of Justice.

Division.

Writ issued 3rd August, 1875.

Between A.B., plaintiff,

and

C.D., defendant.

*Statement of Claim.*

1. The plaintiff is a bricklayer, and the defendant is an hotel keeper. Claim.

WORK AND  
LABOUR.



2. During the months of January and February in 1875 the plaintiff was employed by the defendant to alter the size of the chimney in the defendant's coffee-room, to make various apertures in the walls of the said coffee-room, and do other work therein, according to the directions and at the request of the defendant.

3. The plaintiff sent in his bill soon after the work was completed, and several times asked the defendant to pay for the said work. The defendant repeatedly promised to pay the plaintiff, but never has done so.

The plaintiff claims 1.

[Title.]

*Statement of Defence.*

Defence.

1. The chimney in the defendant's coffee-room used to smoke, and the plaintiff told the defendant he was sure he could prevent it. The defendant said that he had tried many remedies, and found them all useless, and that he was not inclined to waste any more money over it. The plaintiff asked to be allowed to try and prevent the smoking by altering the size of the chimney, and making one or two small holes in the wall, and promised the defendant he would make no charge for his services unless he was successful.

2. The defendant consented to his trying what he could do on these terms only, saying before he began: "You understand you are not to be paid anything if the chimney continues to smoke." The plaintiff replied: "Do not be afraid, it will never smoke again; if it does, I will not charge you a farthing."

3. The plaintiff was a long time about the work, and after he had finished, the chimney smoked worse than ever. The defendant has been and is now ready to pay the plaintiff if and when he prevents the chimney smoking, but contends that according to the terms of his contract he is not bound to pay till the plaintiff has done what he promised (y).

[Title.]

*Reply.*

Reply.

The plaintiff joins issue on the defendant's statement of defence.

(y) These pleas would simply mentioned, ante, pp. 87, 231, 235, amount to "Never indebted," but as this plea is now inadmissible.



## CHAPTER VII.

## ADDITIONAL RULES OF COURT UNDER THE SUPREME COURT OF JUDICATURE ACT, 1875.

THESE additional Rules of Court are dated the 12th of August, and published in the *London Gazette* of 24th August, 1875. Orders I., II., III., and V., relate to the printing of documents and proceedings; Order IV. relates to a special case; and Order VI., which is by far the most important, relates to the costs of proceedings in all the divisions of the Supreme Court of Judicature. In addition to the uniform scale of costs thus provided, there is power given to the Taxing Masters to grant special allowances when in his discretion it appears proper they should be allowed (*a*); and to enable them to discharge this part of their duty satisfactorily, they have power to administer oaths, with the object, it is presumed, of testing the accuracy of the charges and costs stated to have been paid (*b*). The Taxing Master may review his taxation (*c*), and an appeal to a judge is allowed (*d*).

## ORDER I.

Where any written deposition of a witness has been filed for use on a trial, such deposition shall be printed, unless otherwise ordered.

## ORDER II.

The Rules of Court as to printing depositions and affidavits to be used on a trial, shall not apply to deposi-

(*a*) Post, p. 443; and as to the former practice upon this subject, see Chitty's Practice, vol. i. pp. 469-522.

(*b*) See post, General Provision 23, p. 448.

(*c*) See post, General Provision 31.

(*d*) See post, General Provision 32.



tions and affidavits which have previously been used upon any proceeding without having been printed.

### ORDER III.

Other affidavits than those required to be printed by Order XXXVIII., Rule 6, in the Schedule to the Supreme Court of Judicature Act, 1875, may be printed if all the parties interested consent thereto, or the Court or judge so order.

### ORDER IV.

Special  
Case.

The 3rd Rule of the Order XXXIV. in the first Schedule to the Supreme Court of Judicature Act, 1875, shall apply to a special case, pursuant to the Act of 13 and 14 Victoria, c. 35.

### ORDER V.

Printing  
proceed-  
ings.

Where, pursuant to Rules of Court, any pleading, special case, petition of right, deposition or affidavit is to be printed, and where any printed or other office copy thereof is to be taken, the following regulations shall be observed:—

1. The party on whose behalf the deposition or affidavit is taken and filed is to print the same in the manner provided by Rule 2 of Order LVI. in the first Schedule to the Supreme Court of Judicature Act, 1875 (e).

2. To enable the party printing, to print any deposition, the officer with whom it is filed shall on demand deliver to such party a copy written on draft paper on one side only.

3. The party printing shall, on demand in writing, furnish to any other party or his solicitor any number of printed copies, not exceeding ten, upon payment therefor at the rate of 1*d.* per folio for one copy, and  $\frac{1}{2}$ *d.* per folio for every other copy.

4. The solicitor of the party printing shall give credit for the whole amount payable by any other party for printed copies.

5. The party entitled to be furnished with a print shall

(e) See ante, p. 299.



not be allowed any charge in respect of a written copy, unless the Court or judge shall otherwise direct.

Printing  
proceed-  
ings.

6. The party by or on whose behalf any deposition, affidavit, or certificate is filed, shall leave a copy with the officer with whom the same is filed, who shall examine it with the original and mark it as an office copy—such copy shall be a copy printed as above provided where such deposition or affidavit is to be printed.

7. The party or solicitor who has taken any printed or written office copy of any deposition or affidavit is to produce the same upon every proceeding to which the same relates.

8. Where any party is entitled to a copy of any deposition, affidavit, proceeding, or document filed or prepared by or on behalf of another party, which is not required to be printed, such copy shall be furnished by the party by or on whose behalf the same has been filed or prepared.

9. The party requiring any such copy, or his solicitor, is to make a written application to the party by whom the copy is to be furnished, or his solicitor, with an undertaking to pay the proper charges, and thereupon such copy is to be made and ready to be delivered at the expiration of twenty-four hours after the receipt of such request and undertaking, or within such other time as the Court or judge may in any case direct, and is to be furnished accordingly upon demand and payment of the proper charges.

10. In the case of an *ex parte* application for an injunction or writ of *ne exeat regno*, the party making such application is to furnish copies of the affidavits upon which it is granted upon payment of the proper charges immediately upon the receipt of such written request and undertaking as aforesaid, or within such time as may be specified in such request, or may have been directed by the Court.

11. It shall be stated in a note at the foot of every affidavit filed on whose behalf it is so filed, and such note shall be printed on every printed copy of an affidavit, or



Printing  
proceed-  
ings.

set of affidavits, and copied on every office copy and copy furnished to a party.

12. The name and address of the party or solicitor by whom any copy is furnished is to be endorsed thereon in like manner as upon proceedings in Court, and such party or solicitor is to be answerable for the same being a true copy of the original, or of an office copy of the original, of which it purports to be a copy, as the case may be.

13. The folios of all printed and written office copies, and copies delivered or furnished to a party, shall be numbered consecutively in the margin thereof, and such written copies shall be written in a neat and legible manner on the same paper as in the case of printed copies.

14. In case any party or solicitor who shall be required to furnish any such written copy as aforesaid shall either refuse or, for twenty-four hours from the time when the application for such copy has been made, neglect to furnish the same, the person by whom such application shall be made, shall be at liberty to procure an office copy from the office in which the original shall have been filed, and in such case no costs shall be due or payable to the solicitor so making default in respect of the copy or copies so applied for.

15. Where, by any order of the Court (whether of appeal or otherwise) or a judge, any pleading, evidence, or other document, is ordered to be printed, the Court or judge may order the expense of printing to be borne and allowed; and printed copies to be furnished by and to such parties and upon such terms as shall be thought fit.

#### ORDER VI.

Costs.

The following regulations as to costs of proceedings in the Supreme Court of Judicature shall regulate such costs from the commencement of the Supreme Court of Judicature Acts, 1873 and 1875:—

1. Solicitors shall be entitled to charge and be allowed the fees set forth in the column headed "Lower Scale" in the Schedule hereto—



In all actions for purposes to which any of the forms of Costs.  
indorsement of claim on writs of summons in Sections II., IV., and VII. in Part II. of Appendix A, referred to in the 3rd Rule of Order III. in the Schedule to the Supreme Court of Judicature Act, 1875, or other similar forms, are applicable (except as after provided in actions for injunctions) (*f*);

In all causes and matters by the 34th section of the Supreme Court of Judicature Act, 1873, assigned to the Queen's Bench Division of the Court (*g*);

In all causes and matters by the 34th section of the said Act assigned to the Common Pleas Division of the Court (*g*);

In all causes and matters by the 34th section of the said Act assigned to the Exchequer Division of the Court (*g*);

In all causes and matters by the 34th section of the said Act assigned to the Probate, Divorce, and Admiralty Division of the Court (*h*);

And also in causes and matters by the 34th section of the said Act assigned to the Chancery Division of the Court in the following cases (that is to say) (*i*):—

1. By creditors, legatees (whether specific, pecuniary, or residuary), devisees (whether in trust or otherwise), heirs-at-law or next-of-kin, in which the personal or real or personal and real estate for or against or in respect of which or for an account or administration of which the demand may be made shall be under the amount or value of £1000.
2. For the execution of trusts or appointment of new trustees in which the trust estate or fund shall be under the amount or value of £1000.
3. For dissolution of partnership or the taking of partnership or any other accounts in which the partnership assets, or the estate or fund shall be under the amount or value of £1000.
4. For foreclosure or redemption, or for enforcing any charge or lien in which the mortgage whereon the suit is founded, or the charge or lien sought to be

(*f*) See ante, pp. 193, 315, 318, 323.

(*g*) See ante, pp. 122, 123.

(*h*) See ante, p. 123.

(*i*) See ante, pp. 121, 122.



- Costs.

enforced, shall be under the amount or value of £1000.

5. And for specific performance in which the purchase-money or consideration shall be under the amount or value of £1000.
6. In all proceedings under the Trustees' Relief Acts, or under the Trustee Acts, or under any of such Acts, in which the trust estate or fund to which the proceeding relates shall be under the amount or value of £1000.
7. In all proceedings relating to the guardianship or maintenance of infants in which the property of the infant shall be under the amount or value of £1000.
8. In all proceedings by original special case, and in all proceedings relating to funds carried to separate accounts, and in all proceedings under any Railway or Private Act of Parliament, or under any other Statutory or Summary Jurisdiction, and generally in all other cases where the estate or fund to be dealt with shall be under the amount or value of £1000.

2. Solicitors shall be entitled to charge and be allowed the fees set forth in the column headed "Higher Scale" in the Schedule hereto: In all actions for special injunctions to restrain the commission or continuance of waste, nuisances, breaches of covenant, injuries to property and infringement of rights, easements, patents and copyrights, and other similar cases where the procuring such injunction is the principal relief sought to be obtained, and in all cases other than those to which the fees in the column headed "Lower Scale" are hereby made applicable.

3. Notwithstanding these Rules, the Court or judge may in any case direct the fees set forth in either of the said two columns to be allowed to all or either or any of the parties, and as to all or any part of the costs.

4. The provisions of Order LXIII. in the first Schedule to the Supreme Court of Judicature Act, 1875, shall apply to these Rules.



*THE SCHEDULE above referred to.*

. An Order or Rule herein referred to by number, shall mean the Order or Rule Costs, so numbered in the First Schedule to the Supreme Court of Judicature Act, 1875.

## WRITS, SUMMONSES, AND WARRANTS.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Writ of Summons for the Commencement of any Action .. .. .	0	6	8	0	13	4
And for Endorsement of Claim, if special ..	0	5	0	0	5	0
Concurrent Writ of Summons .. .. .	0	6	8	0	6	8
Renewal of a Writ of Summons .. .. .	0	6	8	0	6	8
Notice of a Writ for Service in lieu of Writ out of Jurisdiction .. .. .	0	4	0	0	5	0
Writ of Inquiry .. .. .	1	1	0	1	1	0
Writ of Mandamus or Injunction .. .. .	0	10	0	1	1	0
Or per folio .. .. .	0	1	4	0	1	4
Writ of Subpœna ad Testificandum duces tecum	0	6	8	0	6	8
And if more than four folios, for each folio beyond four .. .. .	0	1	4	0	1	4
Writ or Writs of Subpœna ad Testificandum for any number of persons not exceeding three, and the same for every additional number not exceeding three .. .. .	0	6	8	0	6	8
Writ of Distringas, pursuant to Statute 5 Vict. c. 8 .. .. .	0	13	4	0	13	4
Writ of Execution, or other Writ to enforce any Judgment or Order .. .. .	0	7	0	0	10	0
And if more than four folios, for each folio beyond four .. .. .	0	1	4	0	1	4
Procuring a Writ of Execution or Notice to the Sheriff, marked with a Seal of Renewal ..	0	6	8	0	6	8
Notice thereof to serve on Sheriff .. .. .	0	4	0	0	5	0
Any Writ not included in the above .. .. .	0	7	0	0	10	0

These Fees include all Endorsements and Copies, or Præcipes, for the Officer sealing them, and Attendances to Issue or Seal, but not the Court Fees.



	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Costs. Summons to attend at Judges' Chambers ..	0	3	0	0	6	8
Or if Special, at Taxing Officer's discretion, not exceeding .. .. .	0	6	8	1	1	0
Copy for the Judge, when required .. ..	0	2	0	0	2	0
Or per folio .. .. .	—			0	0	4
Original Summons for Proceedings in Chambers in the Chancery Division .. ..	0	13	4	1	1	0
And attending to get same and duplicate sealed, and at the proper Office to file duplicate and get copies for service stamped .. ..	0	13	4	0	13	4
Copy for the Judge .. .. .	0	2	0	0	2	0
Or per folio .. .. .	—			0	0	4
Endorsing same and copies under 8th Rule of the 35th of the Consolidated General Orders of the Court of Chancery .. ..	0	6	8	0	6	8

SERVICES, NOTICES AND DEMANDS.

Service of any Writ, Summons, Warrant, Interrogatories, Petition, Order, Notice, or Demand on a party who has not entered an appearance, and if not authorized to be served by post .. .. .	0	5	0	0	5	0
If served at a distance of more than two miles from the nearest place of business, or office of the Solicitor serving the same, for each mile beyond such two miles therefrom .. ..	0	1	0	0	1	0
Where in consequence of the distance of the party to be served, it is proper to effect such service through an Agent (other than the London Agent), for Correspondence in addition .. .. .	0	7	0	0	7	0
Where more than one attendance is necessary to effect Service, or to ground an application for substituted Service, such further allowance may be made, as the Taxing Officer shall think fit.						
For Service out of the Jurisdiction, such allowance is to be made as the Taxing Officer shall think fit.						
Service where an appearance has been entered on the Solicitor or Party .. .. .	0	2	6	0	2	6
Or if authorized to be served by post .. ..	0	1	6	0	1	6
Where any Writ, Order, and Notice, or any two						



	Lower Scale.			Higher Scale.			Costs.
	£	s.	d.	£	s.	d.	
of them, have to be served together, one Fee only for Service is to be allowed.							
In addition to the above Fees, the following allowances are to be made:—							
As to Writs, if exceeding two folios, for Copy for Service, per folio beyond such two ..	0	0	4	0	0	4	
As to Summons to attend at the Judges' Chambers, for each Copy to Serve .. ..	0	1	0	0	2	0	
Or per folio .. .. .	0	0	4	0	0	4	
As to Notices in Proceedings to wind up Companies, for preparing or filling up each Notice to Creditors to attend and receive debts, and to Contributories to settle List of Contributories .. .. .	0	1	0	0	1	0	
And for preparing or filling up each Notice to Contributories to be served with a general Order for a Call, or an Order for payment of a Call .. .. .	0	1	0	0	1	0	
And for Drawing Notice to be served on Contributories or Creditors of a Meeting, per folio .. .. .	0	1	0	0	1	0	
For each Copy of the last-mentioned Notice to serve, per folio .. .. .	0	0	4	0	0	4	
For preparing or filling up for Service in any other Cause or Matter, each Notice to Creditors to prove claims, and each Notice that cheques may be received, specifying the amount to be received for Principal and Interest, and Costs, if any .. .. .	0	1	0	0	1	0	
For preparing Notice to produce or admit, and one copy .. .. .	0	5	0	0	7	6	
If Special or necessarily long, such allowance as the Taxing Officer shall think proper, not exceeding per folio .. .. .	0	0	8	0	1	4	
And for each Copy beyond the first, such allowance as the Taxing Master shall think proper, not exceeding per folio .. .. .	0	0	4	0	0	4	
For preparing Notice of Motion .. ..	0	2	0	0	5	0	
Or per folio .. .. .	0	1	0	0	1	0	
Copy for Service .. .. .	0	1	0	0	1	0	
Or per folio .. .. .	—			0	0	4	
For preparing any necessary or proper Notice, not otherwise provided for and demand ..	0	1	6	0	1	6	
Or if special, and necessarily exceeding three							



	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Costs. folios, for preparing same, for each folio beyond three .. .. .	0	1	0	0	1	0
And for each Copy for Service, per folio beyond such three .. .. .	0	0	4	0	0	4
Copies for Service of Interrogatories and Petitions, and of Orders with necessary Notices (if any) to accompany, per folio .. ..	0	0	4	0	0	4
Except as otherwise provided, the allowances for services include Copies for Service.						
Where Notice of filing Affidavits is required, only one Notice is to be allowed for a set of Affidavits filed, or which ought to be filed together.						
In Proceedings to wind up a Company, the usual charges relating to printing shall be allowed in lieu of Copies for Service, where the Fee for Copies would exceed the charges for printing, and amount to more than £3.						
Where any appointment is or ought to be adjourned, Service of a Notice of the adjournment, or next appointment, is not to be allowed.						

## APPEARANCES.

Entering any Appearance .. .. .	0	6	8	0	6	8
If entered at one time, for more than one person, for every Defendant beyond the first	0	1	0	0	2	0
If a Person appearing to a Writ of Summons to recover Land limits his defence by his Memorandum of Appearance, in addition to the above .. .. .	0	6	8	0	6	8

## INSTRUCTIONS.

To Sue or Defend .. .. .	0	6	8	0	13	4
For Statement of Complaint .. .. .	0	13	4	2	2	0
For Statement or further Statement of Defence	0	6	8	0	13	4
For Counter Claim .. .. .	0	6	8	0	13	4
For Reply by Plaintiff when Defendant sets up a Counter Claim .. .. .	0	13	4	1	1	0
For Reply or Further Reply in any other case by plaintiff or other person, with or without Joinder of Issue .. .. .	0	6	8	0	13	4
For Confession of Defence .. .. .	0	6	8	0	13	4
For Joinder of Issue without other matter and for Demurrer .. .. .	0	6	8	0	13	4



	Lower Scale.			Higher Scale.			Costs.
	£	s.	d.	£	s.	d.	
For Special Case, Special Petition, any other Pleading (not being a Summons), and Interrogatories for examination of a party or witness .. .. .	0	6	8	0	13	4	
To amend any Pleading .. .. .	0	6	8	0	13	4	
For Affidavit in Answer to Interrogatories, and other Special Affidavits .. .. .	0	6	8	0	6	8	
To Appeal .. .. .	0	13	4	1	1	0	
To add parties by Order of Court or Judge* ..	0	6	8	0	13	4	
For Counsel to advise on Evidence when the Evidence in Chief is to be taken orally ..	0	6	8	0	6	8	
Or not to exceed .. .. .	0	13	4	1	1	0	
For Counsel to make any application to a Court or Judge where no other Brief .. .. .	0	6	8	0	10	0	
For Brief on Motion for Special Injunction ..	0	13	4	1	1	0	
For Brief on Hearing or Trial of Action upon notice of trial given, whether such trial be before a Judge, with or without a jury, or before an official or special Referee, or on Trial of an Issue of Fact before a Judge, Commissioner, or Referee, or on Assessment of Damages .. .. .	1	1	0	2	2	0	
For such Brief, and for Brief on the hearing of an Appeal when witnesses are to be examined or cross-examined, such fee may be allowed as the Taxing Officer shall think fit, having regard to all the circumstances of the case, and to other allowances, if any, for Attendances on Witnesses and procuring Evidence.							

The Fees for Instructions for Brief are not to apply to a Hearing on Further Consideration.

#### DRAWING PLEADINGS AND OTHER DOCUMENTS.

Statement of Claim .. .. .	0	10	0	1	1	0
Or per folio .. .. .	0	1	0	0	1	0
Statement of Defence .. .. .	0	5	0	0	10	0
Or per folio .. .. .	0	1	0	0	1	0
Statement of Defence and Counter Claim ..	0	5	0	1	1	0
Or per folio .. .. .	0	1	0	0	1	0
Reply, with or without Joinder of Issue, Confession of Defence, Joinder of Issue, without other matter, Demurrer, and any other						



	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
<b>Costs.</b>						
Pleading (not being a Petition or Summons), and Amendments of any Pleading .. ..	0	5	0	0	10	0
Or per folio .. .. .	0	1	0	0	1	0
Particulars, Breaches, and Objections, when required, and one copy to deliver .. ..	0	5	0	0	6	8
Or such amount as the Taxing Officer shall think fit, not exceeding per folio .. ..	0	0	8	0	1	4
If more than one copy to be delivered, for each other copy per folio .. .. .	0	0	4	0	0	4
Special Case, whether original or in an Action, Affidavits in answer to Interrogatories and other Special Affidavits, Special Petitions, and Interrogatories, per folio .. .. .	0	1	0	0	1	0
Brief, on Trial or Hearing of Cause, Issue of Fact, Assessment of Damages, Examination of Witnesses, Demurrer, Special Case and Petition before a Court or Judge, Sheriff, Commissioner, Referee, Examiner or Officer of the Court, when necessary and proper in addition to Pleadings, including necessary and proper observations, per folio .. ..	0	1	0	0	1	0
Brief on Application to add Parties .. ..	0	6	8	0	10	0
Or per folio .. .. .	0	1	0	0	1	0
Brief on Further Consideration, per sheet of 10 folios .. .. .	0	6	8	0	6	8
Accounts, Statements, and other Documents for the Judges' Chambers, when required, and fair copy to leave, per folio .. ..	0	0	8	0	1	4
Advertisements to be signed by Judge's Clerk, including attendance therefor .. ..	0	6	8	0	13	4
Bill of Costs for Taxation, including Copy for the Taxing Officer .. .. .	0	0	8	0	0	8

## COPIES.

Of Pleadings, Briefs, and other Documents where no other provision is made, at per folio .. .. .	0	0	4	0	0	4
Where pursuant to Rules of Court any pleading, Special Case or Petition of Right, or Evidence is printed, the Solicitor of the party printing shall be allowed for a Copy for the Printer (except when made by the Officer of the Court), at per folio .. .. .	0	0	4	0	0	4
And for examining the proof print, at per folio	0	0	2	0	0	8







	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Costs.						
Close Copies, whether printed or written, are not to be allowed as of course, but the allowance is to depend on the propriety of making or sending the copies, which in each case is to be shewn and considered by the Taxing Officer.						
Inserting Amendments in a printed copy of any Pleading, Special Case, or Petition of Right, when not reprinted .. .. .	0	1	0	0	5	0
Or per folio .. .. .	0	0	4	0	0	4

## PERUSALS.

Of Statement of Complaint, Statement of Defence, Reply, Joinder of Issue, Demurrer and other Pleading (not being a Petition or Summons) by the Solicitor of the party to whom the same are delivered .. .. .	0	6	8	0	13	4
Or per folio .. .. .	—			0	0	4
Of Amendment of any such Pleading in writing	0	6	8	0	6	8
Or per folio .. .. .	—			0	0	4
If same reprinted .. .. .	0	6	8	0	13	4
Or per folio of Amendment .. .. .	—			0	0	4
Of Interrogatories to be answered by a party by his Solicitor .. .. .	0	6	8	0	13	4
Or per folio .. .. .	—			0	0	4
Of Special Case by the Solicitor of any party except the one by whom it is prepared ..	0	6	8	0	13	4
Or per folio .. .. .	—			0	0	4
Of Copy Order to add parties, Notice of Defendant's Claim against any person not a party to the action under Order XVI., Rule 18, and of Defendant's Statement of Defence and Counter Claim served on a person not a party under Order XXII., Rule 6, by the Solicitor of the party served therewith, and in these several cases the perusal of the Plaintiff's Statement of Complaint is also to be allowed unless the Solicitor has been previously allowed such perusal .. .. .	0	6	8	0	13	4
Or per folio .. .. .	—			0	0	4
Of Notice to Produce and Notice to Admit by the Solicitor of the party served .. ..	0	6	8	0	13	4
Of Affidavit in Answer to Interrogatories by the Solicitor of the party interrogating, and						



	Lower Scale.			Higher Scale.			Costs.
	£	s.	d.	£	s.	d.	
of other Special Affidavits by the Solicitor of the party against whom the same can be read, per folio .. .. .	0	0	4	0	0	4	

## ATTENDANCES.

To obtain Consent of next Friend to sue in his name .. .. .	0	6	8	0	13	4	
To deliver or file any Pleading (not being a Petition or Summons) and a Special Case ..	0	3	4	0	6	8	
To inspect, or produce for inspection, Docu- ments pursuant to a Notice to Admit ..	0	6	8	0	13	4	
Or per hour .. .. .	0	6	8	0	6	8	
To examine and sign Admissions .. ..	0	6	8	0	13	4	
To inspect, or produce for inspection, Docu- ments referred to in any Pleading or Affidavit, pursuant to notice under Order XXXI., Rule 14 .. .. .	0	6	8	0	6	8	
Or per hour .. .. .	0	6	8	0	6	8	
To obtain or give any necessary or proper con- sent .. .. .	0	6	8	0	6	8	
To obtain an appointment to examine Witnesses	0	6	8	0	6	8	
On examination of Witnesses before any Ex- aminer, Commissioner, Officer, or other per- son .. .. .	0	13	4	0	13	4	
Or according to circumstances, not to exceed ..	2	2	0	2	2	0	
Or if without Counsel, not to exceed .. ..	—			3	3	0	
On Deponents being sworn, or by a Solicitor or his Clerk to be sworn, to an Affidavit in answer to Interrogatories or other special Affidavit .. .. .	0	6	8	0	6	8	
On a Summons at Judges' Chambers .. ..	0	6	8	0	6	8	
Or according to circumstances, not to exceed ..	1	1	0	1	1	0	
In the Chancery Division, all allowances for attending at the Judges' Chambers are to be by the Judge or Chief Clerk as heretofore.							
To file Chief Clerks' and Taxing Masters' Cer- tificates, and get copy marked as an Office Copy .. .. .	0	6	8	0	6	8	
On Counsel with Brief or other Papers—							
If Counsel's fee 1 Guinea .. .. .	0	3	4	0	6	8	
If more and under 5 Guineas .. .. .	0	6	8	0	6	8	
If 5 Guineas and under 20 Guineas .. ..	0	6	8	0	13	4	
If 20 Guineas .. .. .	0	13	4	1	1	0	
If 40 Guineas or more .. .. .	—			2	2	0	



	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
<b>Costs.</b> On Consultation or Conference with Counsel ..	0	13	4	0	13	4
To enter or set down Action, Demurrer, Special Case, or Appeal, for hearing or trial ..	0	6	8	0	6	8
In Court on Motion of Course and on Counsel and for Order .. .. .	0	10	0	0	13	4
To present Petition for Order of Course and for Order .. .. .	0	6	8	0	13	4
In Court on every Special Motion, each day ..	0	6	8	0	13	4
On same when heard each day .. .. .	0	13	4	0	13	4
Or according to circumstances .. .. .	1	1	0	2	2	0
On Demurrer, Special Case, or Special Petition, or Application adjourned from the Judges' Chambers, when in the Special Paper for for the day, or likely to be heard .. ..	0	6	8	0	10	0
On same when heard .. .. .	0	13	4	1	1	0
Or according to circumstances, not to exceed ..	1	1	0	2	2	0
On hearing or trial of any Cause, or Matter, or Issue of Fact, in London or Middlesex, or the Town where the Solicitor resides, or carries on business, whether before a Judge with or without a Jury, or Commissioner, or Referee, or on Assessment of Damages, when in the paper .. .. .	0	10	0	0	10	0
When heard or tried .. .. .	0	13	4	1	1	0
Or according to circumstances .. .. .	2	2	0	2	2	0
When not in London or Middlesex, nor in the Town where the Solicitor resides or carries on business, for each day (except Sundays) he is necessarily absent .. .. .	2	2	0	3	3	0
And expenses (besides actual reasonable travelling expenses) each day, including Sundays .. .. .	1	1	0	1	1	0
Or if the Solicitor has to attend on more than one trial or assessment at the same time and place, in each case .. .. .	1	1	0	1	11	6
The expenses in such case to be rateably divided.						
To hear Judgment when same adjourned ..	0	6	8	0	13	4
Or according to circumstances .. .. .	0	13	4	1	1	0
To deliver Papers (when required) for the use of a Judge prior to a hearing .. .. .	0	6	8	0	6	8
If more than one Judge .. .. .	0	13	4	0	13	4
On taxation of a Bill of Costs .. .. .	0	6	8	0	6	8
Or according to circumstances, not to exceed ..	2	2	0	2	2	0



	Lower Scale.			Higher Scale.			Costs.
	£	s.	d.	£	s.	d.	
In Causes for purposes within the cognizance of the Court of Chancery before the Act passed, such further fee as the Taxing Officer may think fit, not exceeding the allowances heretofore made.							
To obtain or give an undertaking to appear ..	0	6	8	0	6	8	
To present a Special Petition, and for same answered .. .. .	0	6	8	0	6	8	
On Printer to insert Advertisement in Gazette	0	6	8	0	6	8	
On Printer to insert same in other Papers, each Printer .. .. .	—			0	6	8	
Or every two .. .. .	0	6	8	—			
On Registrar to certify that a Cause set down is settled, or for any reason not to come into the Paper for hearing .. .. .	0	6	8	0	6	8	
For an Order drawn up by Chief Clerk, and to get same entered .. .. .	0	6	8	0	6	8	
On Counsel to procure Certificate that Cause proper to be heard as a short Cause, and on Registrar to mark same .. .. .	0	6	8	0	6	8	
To mark Conveyancing Counsel or Taxing Master .. .. .	0	6	8	0	6	8	
For preparing and drawing up an Order made at Chambers in proceedings to wind up a Company, and attending for same, and to get same entered .. .. .	0	13	4	0	13	4	
And for engrossing every such Order, per folio	0	0	4	0	0	4	
NOTE.—An Order of Course means an Order made on an <i>ex parte</i> application, and to which a party is entitled as of right on his own statement and at his own risk.							

OATHS AND EXHIBITS.

Commissioners to take Oaths or Affidavits.							
For every Oath, Declaration, Affirmation or Attestation upon honour, in London or the Country .. .. .							
	0	1	6	0	1	6	
The Solicitor for preparing each Exhibit in town or country .. .. .							
	0	1	0	0	1	0	
The Commissioner for Marking each Exhibit..							
	0	1	0	0	1	0	

TERM FEES.

For every term commencing on the day the Sittings in London and Middlesex of the







## SPECIAL ALLOWANCES AND GENERAL PROVISIONS.

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1. As to writs of summons requiring special indorsement, original special cases, pleadings and affidavits in answer to interrogatories and other special affidavits, when the higher scale is applicable, the taxing officer may, in lieu of the allowances for instructions and preparing or drawing, make such allowance for work, labour and expenses in or about the preparation of such documents as in his discretion he may think proper (*a*). Costs.  
Special  
allowances.

2. As to drawing any pleading (*b*) or other document the fees allowed shall include any copy made for the use of the solicitor, agent, or client, or for counsel to settle.

3. As to instructions to sue or defend, when the higher scale is applicable: if in consequence of the instructions being taken separately from more than three persons (not being co-partners) the taxing officer shall consider the fee above provided inadequate, he may make such further allowance as he shall in his discretion consider reasonable.

4. As to affidavits, when there are several deponents to be sworn, or it is necessary for the purpose of an affidavit being sworn to go to a distance, or to employ an agent, such reasonable allowance may be made as the taxing officer in his discretion may think fit (*b*).

5. The allowances for instructions and drawing an affidavit in answer to interrogatories and other special affidavits, and attending the deponent to be sworn, include all attendances on the deponent to settle and read over (*b*).

6. As to delivery of pleadings, services, and notices, the fees are not to be allowed when the same solicitor is for both parties, unless it be necessary for the purpose of making an affidavit of service (*a*).

(*a*) As to pleadings, see ante, pp. 435-438.

(*b*) As to printing documents, see ante, pp. 228, 245, 425, 426.



Costs.  
Special  
allowances.

7. As to perusals the fees are not to apply where the same solicitor is for both parties.

8. As to evidence, such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence, and the attendance of witnesses, are to be allowed.

9. As to agency correspondence, in country agency causes and matters, if it be shewn to the satisfaction of the taxing officer that such correspondence has been special and extensive, he is to be at liberty to make such special allowance in respect thereof as in his discretion he may think proper.

10. As to attendances at the judges' chambers, where, from the length of the attendance or from the difficulty of the case, the judge or master shall think the highest of the above fees an insufficient remuneration for the services performed, or where the preparation of the case or matter to lay it before the judge or master in chambers, or on a summons, shall have required skill and labour for which no fee has been allowed, the judge or master may allow such fee in lieu of the fee of £1 1s. above provided, not exceeding £2 2s., or where the higher scale is applicable £3 3s., or in proceedings to wind up a company £5 5s., as in his discretion he may think fit; and where the preparation of the case or matter to lay it before a judge at chambers on a summons shall have required and received from the solicitor such extraordinary skill and labour as materially to conduce to the satisfactory and speedy disposal of the business, and therefore shall appear to the judge to deserve higher remuneration than the ordinary fees, the judge may allow to the solicitor, by a memorandum in writing expressly made for that purpose and signed by the judge, specifying distinctly the grounds of such allowance, such fee, not exceeding 10 guineas, as in his discretion he may think fit, instead of the above fees of £2 2s., £3 3s., and £5 5s.

11. As to attendances at the judges' chambers, where by reason of the non-attendance of any party (and it is not considered expedient to proceed ex parte), or where by



reason of the neglect of any party in not being prepared with any proper evidence, account, or other proceeding, the attendance is adjourned without any useful progress being made, the judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending, by the party so absent or neglectful, or by his solicitor personally; and the party so absent, or neglectful, is not to be allowed any fee as against any other party, or any estate or fund in which any other party is interested.

Costs.  
General  
provisions.

12. A folio is to comprise 72 words, every figure comprised in a column being counted as one word.

13. Such costs of procuring the advice of counsel on the pleadings, evidence, and proceedings in any cause or matter, as the taxing officer shall, in his discretion, think just and reasonable, and of procuring counsel to settle such pleadings and special affidavits, as the taxing officer shall, in his discretion, think proper to be settled by counsel, are to be allowed; but as to affidavits, a separate fee is not to be allowed for each affidavit, but one fee for all the affidavits proper to be so settled, which are or ought to be filed at the same time.

14. As to counsel attending at judges' chambers, no costs thereof shall in any case be allowed, unless the judge certifies it to be a proper case for counsel to attend.

15. As to inspection of documents under Order XXXI., Rule 14, no allowance is to be made for any notice or inspection, unless it is shewn, to the satisfaction of the taxing officer, that there were good and sufficient reasons for giving such notice and making such inspection (c).

16. As to taking copies of documents in possession of another party or extracts therefrom, under Rules of Court or any special order, the party entitled to take the copy or extract is to pay the solicitor of the party producing the document for such copy or extract, as he may, by writing, require, at the rate of 4*d.* per folio; and if the solicitor of the party producing the document refuses, or

(c) See 38 & 39 Vict. c. 77, Order xxxi., Rule 14; ante pp. 254, 255.



Costs.  
Special  
allowances.

neglects to supply the same, the solicitor requiring the copy or extract is to be at liberty to make it, and the solicitor for the party producing is not to be entitled to any fee in respect thereof.

17. Where a petition in any cause or matter, assigned to the Chancery Division, is served, and notice is given to the party served that in case of his appearance in Court his costs will be objected to, and accompanied by a tender of costs for perusing the same, the amount to be tendered shall be £2 2s. The party making such payment shall be allowed the same in his costs, provided such service was proper, but not otherwise; but this order is without prejudice to the rights of either party to costs, or to object to costs where no such tender is made, or where the Court or judge shall consider the party entitled notwithstanding such notice or tender to appear in Court. In any other case in which a solicitor of a party served necessarily or properly peruses any such petition without appearing thereon, he is to be allowed a fee not exceeding £2 2s.

18. The Court or judge may, at the hearing of any cause or matter, or upon any application or procedure in any cause or matter in Court or at chambers, and whether the same is objected to or not, direct the costs of any pleading, affidavit, evidence, notice to cross-examine witnesses, account, statement, or other proceeding, or any part thereof, which is improper, unnecessary, or contains unnecessary matter, or is of unnecessary length, to be disallowed, or may direct the taxing officer to look into the same and to disallow the costs thereof, or of such part thereof as he shall find to be improper, unnecessary, or to contain unnecessary matter, or to be of unnecessary length; and in such case the party whose costs are so disallowed shall pay the costs occasioned to the other parties by such unnecessary proceeding, matter, or length; and in any case where such question shall not have been raised before and dealt with by the Court or judge, the taxing officer may look into the same (and, as to evidence, although the same may be entered as read in any decree



or order) for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so. Costs.  
General  
provisions.

19. In any case in which, under the preceding Rule No. 18, or any other Rule of Court, or by the order or direction of a Court or judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the taxing officer may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set-off, or may, if he shall think fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay; or such officer may allow or certify the costs to be paid, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered.

20. Where in the Chancery Division any question as to any costs is under the preceding Rule 18 dealt with at chambers, the chief clerk is to make a note thereof, and state the same on his allowance of the fees for attendances at chambers, or otherwise as may be convenient for the information of the taxing officer (*d*).

21. Where any party appears upon any application or proceeding in Court or at chambers, in which he is not interested or upon which, according to the practice of the Court he ought not to attend, he is not to be allowed any costs of such appearance unless the Court or judge shall expressly direct such costs to be allowed.

22. As to applications to extend the time for taking any proceeding limited by Rules of Court (subject to any special order as to the costs of, and occasioned by, any such application), the costs of one application are, without special order, to be allowed as costs in the cause or matter, but (unless specially ordered) no costs are to be allowed of any further application to the party making the same as against any other party, or any estate or fund in which any other party is interested.

(*d*) See 38 & 39 Vict. c. 77, s. 17, Rule 18; ante, pp. 171, 446.



Costs.  
Special  
allowances.  
Power to  
administer  
oaths.

23. The taxing officers of the Supreme Court, or of any division thereof, shall, for the purpose of any proceeding before them, have power and authority to administer oaths, and shall, in relation to the taxation of costs, perform all such duties as have heretofore been performed by any of the masters, taxing masters, registrars, or other officers of any of the Courts whose jurisdiction is by the Act transferred to the High Court of Justice or Court of Appeal, and shall, in respect thereof, have such powers and authorities as previous to the commencement of the Act were vested in any of such officers, including examining witnesses, directing production of books, papers, and documents, making separate certificates or allocaturs, requiring any party to be represented by a separate solicitor, and to direct and adopt all such other proceedings as could be directed and adopted by any such officer on references for the taxation of costs, and taking accounts of what is due in respect of such costs, and such other accounts connected therewith as may be directed by the Court or a judge.

24. The taxing officer shall have authority to arrange and direct what parties are to attend before him on the taxation of costs to be borne by a fund or estate, and to disallow the costs of any party whose attendance such officer shall, in his discretion, consider unnecessary in consequence of the interest of such party in such fund or estate being small or remote, or sufficiently protected by other parties interested.

25. When any party entitled to costs refuses or neglects to bring in his costs for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the taxing officer shall be at liberty to certify the costs of the other parties, and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect.

26. As to costs to be paid or borne by another party, no costs are to be allowed which do not appear to the



taxing officer to have been necessary or proper for the attainment of justice or defending the rights of the party, or which appear to the taxing officer to have been incurred through over-caution, negligence, or mistake, or merely at the desire of the party.

Costs.  
General  
provisions.

27. As to any work and labour properly performed and not herein provided for, and in respect of which fees have heretofore been allowed, the same or similar fees are to be allowed for such work and labour as have heretofore been allowed.

28. The Rules, Orders, and Practice of any Court whose jurisdiction is transferred to the High Court of Justice or Court of Appeal, relating to costs, and the allowance of the fees of solicitors and attorneys, and the taxation of costs existing prior to the commencement of the Act, shall, in so far as they are not inconsistent with the Act, and the Rules of Court in pursuance thereof, remain in force and be applicable to costs of the same or analogous proceedings, and to the allowance of the fees of solicitors of the Supreme Court and the taxation of costs in the High Court of Justice and Court of Appeal.

29. As to all fees or allowances which are discretionary, the same are, unless otherwise provided, to be allowed at the discretion of the taxing officer, who, in the exercise of such discretion, is to take into consideration the other fees and allowances to the solicitor and counsel, if any, in respect of the work to which any such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and costs of the proceedings, and all other circumstances.

30. Any party who may be dissatisfied with the allowance or disallowance, by the taxing officer, in any bill of costs taxed by him, of the whole or any part of any item or items, may, at any time before the certificate or allocatur is signed, deliver to the other party interested therein, and carry in before the taxing officer an objection in writing, to such allowance or disallowance, specifying



Costs.  
Special  
allowances.

therein by a list, in a short and concise form, the item or items, or parts or part thereof objected to, and may thereupon apply to the taxing officer to review the taxation in respect of the same (e).

Reviewing  
taxation.

31. Upon such application, the taxing officer shall reconsider and review his taxation upon such objections, and he may, if he shall think fit, receive further evidence in respect thereof, and, if so required by either party, he shall state either in his certificate of taxation or allocatur, or by reference to such objection, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto (e).

Appeal.

32. Any party who may be dissatisfied with the certificate or allocatur of the taxing officer, as to any item or part of an item which may have been objected to, as aforesaid, may apply to a judge at chambers for an order to review the taxation as to the same item or part of an item, and the judge may thereupon make such order, as to the judge may seem just; but the certificate or allocatur of the taxing officer shall be final and conclusive, as to all matters which shall not have been objected to in manner aforesaid (e).

33. Such application shall be heard and determined by the judge upon the evidence which shall have been brought in before the taxing officer, and no further evidence shall be received upon the hearing thereof, unless the judge shall otherwise direct (e).

34. When a writ of summons for the commencement of an action shall be issued from a district, and when an action proceeds in a district registry (f), all fees and allowances, and rules and directions relating to costs, which would be applicable to such proceeding if the writ of summons were issued in London, and if the action proceeded in London, shall apply to such writ of summons issued from and other proceedings in the district registry.

(e) As to former practice in relation to Provisions 30-33, see Chitty's Practice, 12th ed., pp. 520-522.

(f) As to district registries, see ante, pp. 135-137, 169, 196, 260-264, and post, p. 451.



## DISTRICT REGISTRIES.

By an Order in Council dated 12th August, and published in the *London Gazette* of 24th August, 1875, District Registries have been established in several districts. The Order is set out verbatim, together with a Schedule of the names of the places made District Registries, in a former part of this Volume (*g*).

## COUNTY COURTS.

We have already given a description of the Jurisdiction of the County Courts prior to the passing of the Judicature Acts (*h*). These Courts, although not a part of the High Court of Justice, are nevertheless subject to the supervision of the High Court, and have conferred upon them by the Judicature Acts, co-extensive powers in most questions within their jurisdiction (*i*). The Orders, Rules, and Forms now in use in the County Courts, are in many respects, inapplicable to the extended powers conferred upon these Courts by the Judicature Acts, and will, therefore, except in proceedings under the Charitable Trusts Acts and the Probate Acts, be shortly superseded by others now under consideration.

The new Orders will, *inter alia*, have reference to Counter-claims; Interlocutory and Interim Orders; Discovery and Interrogatories; Evidence; Actions remitted from or transferred to the High Court of Justice; Appeals; Costs; Pending Actions; and the office and duties of Registrars and their deputies and assistants.

(*g*) See ante, p. 169; also pp. 29, 135-137, 196, 260-264.

(*h*) See ante, pp. 29-42.

(*i*) 36 & 37 Vict. c. 66, ss. 24, 25, 88-91; ante, pp. 107-115, 152; 38 & 39 Vict. c. 77, s. 10; ante, p. 166.



## CHAPTER VIII.

## TIME TABLE OF PROCEDURE.

Time  
Table.

THE times appointed for the delivery of pleadings, applications to the Court or Judge, filing of proceedings, and in fact for all the proceedings which may be taken under the Judicature Acts, 1873 and 1875, are very different from the former practice, and are regulated by Order LVII. (a).

In reckoning the time, calendar months are to be computed unless lunar months are expressed. The day on which you start is excluded, but the day on which the pleading is delivered is included. When "clear days" are limited, neither the day of starting nor the day of delivering is reckoned. If the time limited falls on a Sunday, Christmas Day, Good Friday, or other day on which the offices are closed, the pleading may be delivered on the next day on which the offices are open; Sunday, Christmas Day, Good Friday, and such other days are otherwise counted, unless the time limited is less than six days, in which case they are omitted. The Long Vacation, from 10th August to 24th October, is excluded in the time for the delivery of pleadings, and no pleadings can be delivered or amended in the Long Vacation, unless otherwise ordered (a).

The time appointed may generally be enlarged or abridged by a Court or Judge, and any such enlargement may be ordered, although the application is not made until after the expiration of the time appointed or allowed.

## ADMIRALTY ACTIONS,

Within what time to proceed after service of writ and default of appearance. Order xiii., r. 10, *ante*, p. 214.  
See, *post*, SALE.

## ADMIRALTY WRITS,

Filing within 6 days from service. Order ix., r. 9, *ante*, p. 204.

(a) Order lvii., *ante*, p. 299.



**AFFIDAVITS,**Time  
Table.

Filing of, by plaintiff, for use at trial, 14 days after consent for taking evidence by affidavit. Parties may agree, or an order may be obtained for further time. Order xxxviii., r. 1, p. 272.

Filing of, by defendant, 14 days after delivery of plaintiff's list. Order xxxviii., r. 2, p. 272.

Filing of, by plaintiff, in reply, 7 days after expiration of above 14 days. Order xxxviii., r. 3, p. 272.

**AMENDMENT OF PLEADINGS,**

By plaintiff, of statement of claim, without leave. Once only before time for reply and before reply, or where no defence delivered, 4 weeks from appearance. Order xxvii., r. 2, p. 244.

By defendant, of set-off or counter-claim, without leave; before time for pleading to reply, and before pleading to reply, or, where no reply, before 28 days from defence. Order xxvii., r. 3, p. 244.

Application by opposite party to disallow amendment, 8 days from delivery of amended pleading. Order xxvii., r. 4, p. 244.

Counter-amendment by leave, after amendment without leave, and amendment in all other cases by leave, as limited by the order, or, if no time limited, 14 days from the date of the order. If the time expires the order lapses. Order xxvii., r. 7, p. 244.

**APPEALS,**

To Court of Appeal from High Court, from orders other than interlocutory 1 year from judgment. Time may be enlarged by special leave. Order lviii., r. 15, p. 303.

From interlocutory orders, 21 days from order. Time may be extended. Order lviii., r. 15, p. 303.

In winding-up or bankruptcy orders, or matters not being actions, 21 days from order. Further time with leave. Order lviii., r. 9, p. 302.

Notice of appeal from judgments, 14 days' notice. Order lviii., r. 4, p. 301.

From interlocutory orders, 4 days' notice. Order lviii., r. 4, p. 301.

8 days' notice by respondent of intention to contend that decision of Court below should be varied (in case of final judgment). Omission to give notice, ground for adjournment. Order lviii., r. 7, p. 302.



Time  
Table.

In case of interlocutory order, 2 days' notice. Further time with leave. Order lviii., r. 7, p. 302.

From Chambers, from judge to Courts in Common Law Divisions, 8 days after decision appealed against. Order liv., r. 6, p. 297.

From master to judge, 4 days. Either judge or master may enlarge time. Order liv., r. 4, p. 297.

From district registrar to judge, 4 days. Either judge or registrar may enlarge time. Order xxxv., r. 7, p. 262.

#### APPEARANCES,

By defendant within jurisdiction, 8 days after service of writ. Order ii., r. 3, p. 192, and App. A., Form 1, p. 310.

By defendant not within jurisdiction, within time limited by order out of jurisdiction allowing the service. Order ii., r. 5, p. 192, and App. A., Form 2, p. 311.

Notice of appearance elsewhere than where writ issued, same day as appearance. Order xii., r. 6, p. 208.

#### BILLS OF EXCHANGE,

Summary procedure on: leave to defend, 12 days from service of writ of summons. 18 & 19 Vict. c. 67, p. 44. Order ii., r. 6, p. 193.

#### CHAMBERS,

Applications at, generally. Order liv., p. 296.

#### CHANCERY ACTIONS,

When to proceed after service of writ and default in appearance. Order xiii., r. 9, p. 213.

#### COMMON LAW ACTIONS,

When to proceed after service of writ and default in appearance. Order xiii., rr. 1—8, pp. 211-213.

#### CONCURRENT WRITS

May be issued within 12 months after the original. Order vi., r. 1, p. 200.

Renewal of. Order viii., r. 1, *ante*, p. 202.

#### DEFENCE,

8 days from delivery of statement of claim, or time for appearance, whichever is the last. Order xxii., r. 1, p. 239.

Where statement of claim dispensed with and not delivered, 8 days after appearance. Order xxii., r. 2, p. 239.



**DEMURRER,**Time  
Table.

To statement of claim, 8 days. Order xxviii., r. 3, p. 246 ;

Order xxii., r. 1, p. 239.

To defence, 3 weeks. Order xxviii., r. 3, p. 246 ; Order xxiv., r. 1, p. 242.

To reply, 4 days, unless extended by order. Order xxviii., r. 3, p. 246 ; Order xxiv., r. 3, p. 243.

**DISCONTINUANCE**

By plaintiff at any time before receipt of defendant's defence, or afterwards by leave. Order xxiii., p. 241.

**DISCOVERY.**

Interrogatories may be delivered at any time before close of pleadings, and afterwards by leave. Order xxxi., p. 252.

**DISTRICT REGISTRIES.**

Removal from district registry, by defendant, within 8 days, if writ specially indorsed, and no application for final judgment. Order xxxv., r. 11, p. 262.

**EXCEPTIONS**

From Rules. Order lxii., p. 307.

**EXECUTION,**

Issue of writ of fi. fa. or elegit to enforce judgment for payment of money, immediately after entry of judgment, unless stay of execution ordered. Order xlii., r. 15, p. 282.

Renewal of writ, within 1 year, and by leave of Court or judge afterwards. Order xlii., r. 16, p. 282.

Time within which execution may issue, 6 years from judgment, after the 6 years, or if the parties have changed, leave must be obtained. Order xlii., rr. 18, 19, p. 283.

**FINAL JUDGMENT,**

Shewing cause against, where writ specially indorsed, 2 clear days after service of summons for final judgment. Order xiv., rr. 2, 3, p. 216.

**GUARDIAN AD LITEM,**

Notice of application for, in case of non-appearance by infant or person of unsound mind, to be served after time limited for appearance, and 6 clear days before named in notice for application. Order xiii., r. 1, p. 211.

As to change of parties, see Order l., p. 291.



Time  
Table.

**INDORSEMENTS,**

Of service of writs of summons. Order ix., r. 13, *ante*, p. 205.

**INSPECTION OF DOCUMENTS,**

After notice to produce under Rule 15, give a 2 days' notice to inspect within 3 days, all documents contained in affidavit of documents; 4 days' notice of documents not named in affidavit. Order xxxi., r. 16, *et seq.*, p. 255.

**INTERLOCUTORY**

Applications. See Order lii., p. 293.

**INTERPLEADER,**

Application for leave to interplead, any time after service of writ, and before defence. Order i., r. 2, p. 191.

**INTERROGATORIES,**

Delivery of, by plaintiff, without leave, at any time between delivery of statement of claim, and close of pleadings. Order xxxi., r. 1, p. 252.

By defendant, without leave, at any time between delivery of defence, and close of pleadings. Order xxxi., r. 1, p. 252.

By either party, at any time, with leave. Order xxxi., r. 1, p. 252.

Application to strike out interrogatories, 4 days after service. Order xxxi., r. 5, p. 253.

Answer to interrogatories to be filed within 10 days, time may be extended by order. Order xxxi., r. 6, p. 253.

**JOINDER OF ISSUE,**

If by way of reply, 3 weeks after defence, unless extended by order. Order xxiv., r. 1, p. 242.

If after reply, 4 days after previous pleading, unless extended by order. Order xxiv., r. 3, p. 243.

**JUDGMENT,**

Set down, Action on motion for judgment, within time limited by leave, or 10 days after trial. Order xl., r. 3, p. 275.

Application setting aside judgment, entered in absence of either party, 6 days after trial. Order xxxvi., r. 20, p. 267.

Application to enter final judgment where writ is specially indorsed. Order xiv., r. 2, p. 216.

**JURY,**

For trial by. Order xxxvi., rr. 3, 4, p. 265.



## MOTIONS,

Generally. Order liii., p. 295.

Time  
Table.

## NEW TRIAL,

Application for order to show cause against, 4 days after trial, or within first 4 days of sittings after trial, Court or judge may extend time. Order xxxix., r. 1, p. 274.

Showing cause against order, after 8 days. *Ib.*

Service of copy of order on opposite party, 4 days from date of order. Order xxxix., r. 2, p. 274.

## NOTICE OF TRIAL,

By either party, 10 days, unless otherwise ordered, short notice, 4 days. Order xxxvi., r. 9, p. 266.

## NOTICE FOR TRIAL BY JURY,

4 days from service of notice of trial. Order xxxvi., rr. 3, 4, p. 265.

## PAYMENT INTO COURT,

In action to recover debt or damages, at any time after writ, and before or with defence, or by leave, at any later time. Order xxx., r. 1, p. 251.

Service of notice of, upon plaintiff, if payment made before defence, immediately upon payment. Order xxx., r. 2, p. 251.

Notice by plaintiff of acceptance of sum paid in satisfaction, 4 days after receipt of notice of payment, or if payment first stated in defence, any time before reply. Order xxx., r. 4, p. 252.

Judgment for taxed costs after acceptance in satisfaction, 48 hours after non-payment of taxed costs. Order xxx., r. 4, p. 252.

## PLEADINGS,

Generally. Order xix., p. 227. See *ante*, AMENDMENTS.

Pleading matters arising, pending action. Order xx., p. 236.

## POSSESSION

(Admiralty action of), notice of proceeding in, on default of appearance, after 6 days from filing of writ. Order xiii., r. 10, p. 214.

Filing proofs, and entering action for hearing, after 6 days from advertisement of notice of proceeding. Order xiii., r. 10, p. 214.



Time  
Table.

**PRESERVATION OF PROPERTY.**

Interim orders. Order lii., p. 293.

**PROBATE ACTION,**

When to proceed after service of writ, and default in appearance. Order xiii., r. 9, p. 213.

**REPLY.**

3 weeks after defence, unless extended by order. Order xxiv., r. 1, p. 242.

Pleadings subsequent to, 4 days after previous pleading, unless extended by order. Order xxiv., r. 3, p. 243.

**SALE (ADMIRALTY ACTION IN REM),**

Notice of, in default of appearance, after 12 days from filing writ of summons. Order xiii., r. 10, p. 214.

By plaintiff in second action against same property in default of plaintiff in first action, after 18 days from filing writ in first action. Order xiii., r. 10, p. 214.

Notice of motion for, after 6 days from advertisement of notice of sale. Order xiii., r. 10, p. 214.

Filing proofs, in registry, within 6 days from payment of proceeds. Order xiii., r. 10, p. 214.

**STATEMENT OF CLAIM,**

Delivery of, by plaintiff, unless dispensed with, 6 weeks after appearance, in action generally, unless otherwise ordered. Order xxi., r. 1, p. 237.

In Probate actions, unless otherwise ordered, plaintiff not compellable to deliver until after 8 days from filing of affidavit of scripts. Order xxi., r. 2, p. 237.

In Admiralty actions, 12 days after appearance. Order xxi., r. 2, p. 238.

**THIRD PARTIES,**

In certain actions when to enter appearance. Order xvi., r. 20, p. 222.

**TRIAL,**

Notice of, within what time. Order xxxvi., p. 264.

**WRIT OF SUMMONS,**

In force for 12 months only. Order viii., r. 1, p. 201.

When renewed by order, in force for 6 months longer. Order viii., r. 1, p. 201.

Indorsement of date of service on, within 3 days from service. Order ix., r. 13, p. 205.



## CHAPTER IX.

## JURISDICTION AND PRACTICE OF DIVISIONAL COURTS.

*Jurisdiction and Practice of Divisional Courts, in matters expressly assigned to them by the Judicature Acts, 1873 and 1875, with references to the Statutes and Orders of Court thereon.*

*Chancery Division—Common Law Division, viz., Queen's Bench, Common Pleas, and Exchequer.*

*Admiralty, Probate, Matrimonial and Divorce Division.*

*Actions in formâ pauperis—Petitions of Right.*

*Evidence on Commission—Imprisonment for Debt.*

## CHANCERY DIVISION.

WE have already made some observations upon this subject, and referred to some matters in which exclusive jurisdiction is given to the Chancery Division of the High Court of Justice. We now refer to them more particularly (a) :—

Chancery  
Division.

Production of *cestui que vie*, on application of remainderman, 6 Anne, c. 18.

Legacy Duty, 36 Geo. 3, c. 52, s. 32.

Land Tax Redemption, 42 Geo. 3, c. 116.

Property Law Amendment, 11 Geo. 4 & 1 Will. 4, c. 65.

Investment on Real Securities in Ireland, 4 & 5 Will. 4, c. 29.

Judgments, 1 & 2 Vict. c. 110; 27 & 28 Vict. c. 112.

Custody of Infants, 2 & 3 Vict. c. 54; 3 & 4 Vict. c. 90; 36 & 37 Vict. c. 12.

Grammar Schools, 3 & 4 Will. 4, c. 77.

Copyhold Enfranchisement, 4 & 5 Vict. c. 35; 6 & 7 Vict. c. 23; 15 & 16 Vict. c. 51; 21 & 22 Vict. c. 94.

Ecclesiastical Estates, 5 & 6 Vict. c. 26; 14 & 15 Vict. c. 104.

Perpetuation of Testimony, 5 & 6 Vict. c. 69.

The Defence Acts, 5 & 6 Vict. c. 94; 18 & 19 Vict. c. 117; 22 & 23 Vict. c. 21; 23 & 24 Vict. c. 112; 27 & 28 Vict. c. 39.

(a) Ante, pp. 15-17, 121.



Chancery  
Division.

Solicitors, 6 & 7 Vict. c. 73.

Lands Clauses Consolidation Act, 1845, 8 Vict. c. 18.

Drainage and Improvement of Land, 8 & 9 Vict. c. 56; 10 & 11 Vict. cc. 11, 38; 11 & 12 Vict. c. 119; 13 & 14 Vict. c. 31; 19 & 20 Vict. c. 9; 27 & 28 Vict. c. 114; 33 & 34 Vict. c. 56.

Inclosure Act, 8 & 9 Vict. c. 110.

Building Churches, 8 & 9 Vict. c. 70.

Parliamentary Deposits, 9 Vict. c. 20.

Trustee Relief Acts, 10 & 11 Vict. c. 96; 12 & 13 Vict. c. 74; 22 & 23 Vict. c. 35. Proceedings under the Trustee Relief Act, 10 & 11 Vict. c. 96; Ch. C. Order XLI., No. 1. For Order see 29 Law Journal Reports (New Series), Equity, 42.

Trustee Acts, 13 & 14 Vict. c. 60; 15 & 16 Vict. c. 55.

Charitable Trusts, 16 & 17 Vict. c. 137; 18 & 19 Vict. c. 124; 32 & 33 Vict. c. 110; 52 Geo. 3, c. 101. Proceedings under the Statute 16 & 17 Vict. c. 137, relating to Charitable Trusts, Ch. C. Order XLI., No. 2. For Order see 29 Law Journal Reports (New Series), Equity, 42.

The Merchant Shipping Acts (17 & 18 Vict. c. 104; 18 & 19 Vict. c. 91).

Infants' Settlement Act, 18 & 19 Vict. c. 43.

Leases and Sales of Settled Estates, 19 & 20 Vict. c. 120; 21 & 22 Vict. c. 77; 27 & 28 Vict. c. 45. Proceedings under the Statute 19 & 20 Vict. c. 120, relating to Leases and Sales of Settled Estates, Ch. C. Order XLI., No. 3. For Order see 29 Law Journal Reports (New Series), Equity, 42.

Confirmation of Sales, 25 & 26 Vict. c. 108.

Transfer of Land Act, 25 & 26 Vict. c. 53.

Declaration of Title Act, 25 & 26 Vict. c. 67.

The Mortgage Debenture Acts, 28 & 29 Vict. c. 78; 33 & 34 Vict. c. 20.

The Railway Companies Act, 1867, 30 & 31 Vict. c. 127. Order in Chancery under the Railway Companies Act, 1867, made January, 1868. See 37 Law Journal Reports (New Series), Equity, 1.

Metropolitan Board of Works Loans Act, 32 & 33 Vict. c. 102.

The National Debt Act, 1870, 33 & 34 Vict. c. 71.

The Felons' Property Act, 33 & 34 Vict. c. 23.

Married Women's Property Act, 33 & 34 Vict. c. 23.

## GENERAL ORDER AS TO PETITIONS.

## Petitions.

Ch. C. Order XXXIV., 29 Law Journal Reports, New Series, 31.



## WINDING UP COMPANIES AND RULES THEREON.

[25 &amp; 26 VICT. c. 89.]

An Act for the Incorporation, Regulation, and Winding-up of Trading Companies and other Associations. [7th August, 1862.] Winding up Companies.

The winding-up sections are 74–173. See sect. 10 of the Judicature Act, 1875, as to the rules in use in bankruptcy in reference to secured creditors; by Order LVIII., Rules 9 and 15, *ante*, p. 302, the time for appealing from a winding-up order is twenty-one days.

[30 &amp; 31 VICT. c. 131.]

An Act to amend the Companies Act, 1862. [20th August, 1867.]  
General Order and Rules in Chancery, 11th November, 1862, to regulate the mode of proceeding under the Companies Act, 1862. See 32 Law Journal Reports, New Series, Equity, 1.

General Order and Rules in Chancery of 21st March, 1868, to regulate the mode of proceeding under the Companies Act, 1867.

This last-mentioned order was amended by an order made on the 2nd of March, 1869. See 37 & 38 Law Journal Reports, Equity.

[33 &amp; 34 VICT. c. 61.]

An Act to amend the Law relating to Life Assurance Companies.

[9th August, 1870.]

Sections 21 & 22 relate to winding-up.

[35 &amp; 36 VICT. c. 41.]

An Act to amend the Life Assurance Companies Acts, 1870 & 1871.

[6th August, 1872.]

## PRACTICE IN CHAMBERS.

Practice in Chambers.

[15 &amp; 16 VICT. c. 80.]

An Act to abolish the Office of Master in Ordinary of the High Court of Chancery, and to make Provision for the more speedy and efficient Dispatch of Business in the said Court. [30th June, 1852.]

This Act empowers the Chancery judges to sit in chambers and dispose of business of a formal and discretionary kind, relating to pleadings in actions, the management of property, &c. The mode of proceeding is to be by summons, as at common law. Powers are also given to the respective judges to delegate this jurisdiction to their chief clerks, who make certificates to the judge. General powers are also conferred on the Lord Chancellor, with the Master of the Rolls and Vice-Chancellors, to make rules for regulating the conduct of business at chambers. The judge at chambers also receives the opinion of conveyancing counsel,



Chancery  
Division.

who, six in number, are appointed under this Act. The assistance of accountants, merchants, engineers, actuaries, and other scientific persons may also be obtained.

By Order LX., Rule 1, of the Judicature Act, 1875, the officers of the Court of Chancery are attached to the Chancery Division of the Court, but no rules are provided for the regulation of business in the chambers of the Chancery Division.

Order XXXV. of Consolidated Orders of the Court of Chancery.

[15th February, 1860.]

To be found in 29 Law Journal Reports, New Series, Equity, 31. This order extends the business to be conducted in chambers, and further regulates the procedure.

Regulations to be observed in the conduct of business at the chambers of the Master of the Rolls and the Vice-Chancellors, by order of the Right Hon. Sir John Romilly, Master of the Rolls; the Honourable the Vice-Chancellor Sir Richard Torin Kindersley; the Honourable the Vice-Chancellor Sir John Stuart, and the Honourable the Vice-Chancellor Sir William Page Wood, this 8th day of August, 1857.

To be found in 27 Law Journal Reports, New Series, Chancery, 15.

These regulations only indicate the most convenient way for taking proceedings, but are not obligatory. By Ch. C. O. I., Rule 34, the chief clerks of the judges are required to meet and consider the rules for the transaction of business at chambers.

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## COMMON LAW DIVISION.

### QUEEN'S BENCH.

Common  
Law Divi-  
sion.

We have already referred to the matters exclusively assigned to this Division (b).

### COMMON PLEAS.

The matters assigned to this Division will also be found in previous chapters (c).

### EXCHEQUER.

We have also referred to some matters assigned to this Division (d).

(b) Ante, pp. 17, 122.

(c) Ante, pp. 17, 122.

(d) Ante, pp. 18, 123.



## REVENUE QUESTIONS.

Order LXII. (e) provides that nothing in the Judicature Act is to affect the practice on the Revenue side of the Exchequer Division.

[18 & 19 VICT. c. 90.]

An Act for the Payment of Costs in Proceedings instituted on behalf of the Crown in matters relating to the Revenue, and for the Amendment of the Procedure and Practice in Crown Suits in the Court of Exchequer.

[14th August, 1855.]

By this Act the rule that the Crown does not take or pay costs is abrogated so far as matters of revenue are concerned, and power is given to make rules for the regulation of pleading and practice.

[22 & 23 VICT. c. 21.]

An Act to regulate the Office of Queen's Remembrancer, and to amend the Practice and Procedure on the Revenue Side of the Court of Exchequer.

[13th August, 1859.]

The Queen's Remembrancer is referred to in the 77th section of the Judicature Act, 1873 (f), and he is liable to perform the same or analogous duties as an officer of the Supreme Court. By this Act a bill of exceptions may be tendered in revenue causes. (g).

[28 & 29 VICT. c. 104.]

An Act to amend the Procedure and Practice in Crown Suits in the Court of Exchequer at Westminster; and for other purposes.

[5th July, 1865.]

This is the principal Act regulating the Procedure in Revenue causes. The procedure is more like that formerly in use in the Court of Chancery than that of the High Court of Justice established by the Judicature Acts. Except as varied by the Judicature Acts, and by

REGULÆ GENERALES, 24 VICT. (1860). To be found in 6 Hurlstone & Norman's Reports, 1.

REGULÆ GENERALES, 25 VICT. (1861). To be found in 7 Hurlstone & Norman's Reports, 505.

GENERAL RULES as to the Payment of Fees by Stamps (1865). To be found in 35 Law Journal Reports, Common Law, 20.

REGULÆ GENERALES, Easter Term, 1866, for regulating the Procedure and Practice in Suits by English information. With Schedule of Solicitors' Fees. To be found in the Law Reports, 1 Ex. 389, and in the 35 Law Journal Reports, Common Law, 1.

(e) Ante p. 307.

(f) See ante, p. 143.

(g) See Order lviii., Rule 1, ante, pp. 18, 123, 300.



## CHANCERY OR COMMON LAW DIVISION.

ACTIONS IN  
FORMA  
PAUPERIS.

ACTION IN FORMA PAUPERIS.

[11 HEN. 7, c. 12.]

*An Acte to admitt such Persons as are Poore to sue in Formā Pauperis.*

Prayen the Commons in this present parliament assembled that where the king our sovereign Lord of his most gracious disposition willeth and intendeth indifferent justice to be had and ministered according to his common laws to all his true subjects, as well to poor as rich, which poor subjects be not of ability ne power to sue according to the laws of this land for the redress of injuries and wrongs to them daily done, as well concerning their persons and their inheritance as other cause, for remedy whereof in the behalf of the poor persons of this land not able to sue for their remedy after the course of the common law: Be it enacted that, every poor person or persons which have or hereafter shall have cause of action or actions against any person or persons within this realm shall have by the discretion of the Chancellor of this realm for the time being, writ or writs original and writs of subpœna, according to the nature of their causes, therefor nothing paying to your highness for the seals of the same, nor to any person for the writing of the writ or writs to be hereafter sued, and that the said Chancellor for the time being shall assign such of the clerks which shall do and use the making and writing of the same writs to write the same ready to be sealed, and also learned counsel and attornies for the same without the reward taken therefor: and after the said writ or writs be returned, if it be afore the king in his Bench, the justices there shall assign to the same poor person or persons counsel learned by their discretions, which shall give their counsels nothing taking for the same, and likewise the justices shall appoint attorney and attornies for the same poor person or persons, and all other officers requisite and necessary to be had for the speed of the said suits to be had and made, which shall do their duties without any reward for their counsels, help, and business in the same, and the same law and order shall be observed and kept of all such suits to be made afore the king's justices of his common place and barons of his Exchequer, and all other justices in the courts of record where any such suits shall be.

Assignment  
of counsel  
and solicitor  
to pauper.

This statute did not apply to Courts of Equity, but those Courts act upon a similar principle. *Wilkinson v. Belsher*, 2 Bro. C. C. 272.

## CONSOLIDATED ORDERS OF THE COURT OF CHANCERY; ORDER VII.

Certificate  
of counsel.

8. No person shall be admitted to prosecute any suit in this Court in



*formâ pauperis* without a certificate of counsel that he conceives the case to be proper for relief in this Court. ACTIONS IN  
FORMÂ  
PAUPERIS.

This rule, as well as the Common Law Rules which follow, will now apply to the High Court of Justice, except as varied by the Judicature Acts : see sect. 21 of the Judicature Act, 1875 (*h*).

### COMMON LAW RULES.

#### GENERAL RULES OF HILARY TERM, 1853.

121. No person shall be permitted to sue *in formâ pauperis* unless the case laid before counsel for his opinion, and his opinion thereon, with an affidavit of the party, or his attorney, that the same case contains a full and true statement of all the material facts to the best of his knowledge or belief, shall be produced before the Court or judge to whom application may be made ; and no fees shall be payable by a pauper to his counsel and attorney, nor at the offices of the masters or associates, or at the judges' chambers by reason of a verdict being found for such pauper exceeding five pounds. Affidavit of  
pauper.

The pauper must make an affidavit that he is not worth 5*l.*, except his clothes and interest in the suit. Notice of the order must be served on the opposite party : *Ballard v. Catling*, 2 Keen, 606. The order, if made *pendente lite*, has no retrospective effect, leaving the pauper liable to pay costs previously incurred ; and, by a rule of the Exchequer (Man. Ex. Pr., 1st ed.), he must give security for those costs : *Jones v. Peers*, 1 M'Clel. & Y. 282. The pauper does not pay Court fees ; if he fails, he pays no costs to the opposite party, and if he succeeds he obtains no costs but out-of-pocket expenses.

122. Where a pauper omits to proceed to trial pursuant to notice, he may be called upon by a rule to shew cause why he should not pay costs, though he has not been dispaupered, and why all further proceedings should not be stayed until such costs shall be paid. Costs of  
pauper suing.

#### GENERAL RULES OF TRINITY TERM, 1853.

28. A person admitted to sue *in formâ pauperis* shall not, in any case, be entitled to costs, unless by order of the Court or judge.

### CONSOLIDATED ORDERS OF THE COURT OF CHANCERY ;

#### ORDER VII.

9. After an admittance to sue or defend *in formâ pauperis*, no fee, Fees to  
counsel and  
solicitors.

(*h*) Ante, p. 174.



ACTIONS IN  
FORMA  
PAUPERIS.

profit, or reward shall be taken of the pauper by any counsel or solicitor for the despatch of the pauper's business during the time it shall depend in Court, and he shall continue *in formâ pauperis*, nor shall any agreement be made for any recompense or reward afterwards. Any person offending herein shall be deemed guilty of a contempt of Court; and the party admitted who shall give any such fee, or reward, or make any such agreement, shall be from thenceforth dispaupered, and not be afterwards admitted again in that suit to sue or defend *in formâ pauperis*.

The Court of Chancery has always admitted defendants to defend *in formâ pauperis*, but the Courts of Common Law did not allow them the privilege in civil actions: *Oldfield v. Cobbett*, Phil. 163. In indictments, the Court of Queen's Bench allows defences *in formâ pauperis*: *R. v. Nicholson*, 8 Dowl. 489. Defendants in the High Court of Justice will now be able to defend *in formâ pauperis*, as this is a method of procedure recognised by section 21 of the Judicature Act, 1875 (†).

Counsel and  
solicitor  
bound to  
assist.

10. The counsel or solicitor assigned by the Court to assist a person *in formâ pauperis*, either to sue or defend, may not refuse so to do unless such counsel or solicitor satisfy the judge who granted the admittance with some good reason for his unwillingness to be so assigned.

Process of  
contempt at  
instance of  
pauper.

11. No process of contempt shall be issued at the instance of any person suing or defending *in formâ pauperis* until it be signed by his solicitor in the suit. And no notice of motion served or petition presented on behalf of any person admitted to sue or defend *in formâ pauperis* (except for the discharge of his solicitor) shall be of any effect; nor shall any person served with such notice or petition be bound to appear thereon, unless such notice or petition be signed by the solicitor of such person so suing or defending. And such solicitor shall take care that no process be taken out and that no such notice or petition be served needlessly, or for vexation, but upon just and good grounds.

[23 HEN. 8, c. 15.]

*An Act that the Defendant shall recover Costs against the Plaintiff, if the Plaintiff be Non-suited, or if the Verdict passe against him.*

[A.D. 1531.]

Pauper non-  
suited not to  
pay costs, but  
to suffer  
punishment.

II. Provided always, that all and every such poor person or persons, being plaintiff or plaintiffs in any of the said actions, bills or plaints which, at the commencement of their suits or actions, be admitted by the discretion of the judge or judges where such suits or actions shall be pursued or taken to have their process and council of charity without any money or fee paying for the same, shall not be compelled to pay any costs by virtue and force of this statute, but shall suffer other

(†) Ante, p. 174.



punishment as by the discretion of the justices or judge, afore whom such suits shall depend, shall be thought reasonable, anything afore rehearsed to the contrary hereof notwithstanding.

## CHANCERY, OR COMMON LAW DIVISION.

### PETITION OF RIGHT.

We have already made some observations upon this subject (*j*), and inasmuch as the procedure under the Judicature Acts does not usually apply, we have given here the sections of the statute (commonly called "Bovill's Act") applicable to such cases, together with the forms to be adopted subject to the alterations rendered necessary by the Judicature Acts. PETITIONS  
OF RIGHT.

*An Act to amend the Law relating to Petitions of Right, to simplify the Proceedings, and to make Provisions for the Costs thereof.* 23 & 24 Vict.  
c. 34.

[3rd July, 1860.]

WHEREAS it is expedient to amend the law relating to petitions of right, to simplify the procedure therein, to make provision for the recovery of costs in such cases, and to assimilate the proceedings, as nearly as may be, to the course of practice and procedure now in force in actions and suits between subject and subject: Be it therefore enacted by the Queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

I. A petition of right may, if the suppliant think fit, be intituled in any one of the superior courts of common law or equity at Westminster in which the subject-matter of such petition or any material part thereof would have been cognizable if the same had been a matter in dispute between subject and subject, and if intituled in a court of common law shall state in the margin the venue for the trial of such petition; and such petition shall be addressed to her Majesty in the form or to the effect in the schedule to this Act annexed (No. 1), and shall state the christian and surname and usual place of abode of the suppliant and of his attorney, if any, by whom the same shall be presented, and shall set forth with convenient certainty the facts entitling the suppliant to relief, and shall be signed by such suppliant, his counsel or attorney. Petitions  
of right  
intituled  
in any of  
the superior  
courts

II. The said petition shall be left with the Secretary of State for the Home Department, in order that the same may be submitted to her to be left at  
Home Office.

(*j*) See ante, p. 76.



**PETITIONS OF RIGHT.**

Majesty for her Majesty's gracious consideration, and in order that her Majesty, if she shall think fit, may grant her fiat that right be done, and no fee or sum of money shall be payable by the suppliant on so leaving such petition, or upon his receiving back the same.

Upon fiat being obtained, petition, &c., to be left at office of solicitor of treasury.

III. Upon her Majesty's fiat being obtained to such petition, a copy of such petition and fiat shall be left at the office of the solicitor to the treasury, with an endorsement thereon in the form or to the effect in the schedule (No. 2) to this Act annexed, praying for a plea or answer on behalf of her Majesty within twenty-eight days, and it shall thereupon be the duty of the said solicitor to transmit such petition to the particular department to which the subject-matter of such petition may relate, and the same shall be prosecuted in the court in which the same shall be intituled, or in such other court as the Lord Chancellor may direct.

Time for answering by the crown.

IV. The time for answering, pleading, or demurring to such petition, on behalf of her Majesty, shall be the said period of twenty-eight days after the same, with such prayer of a plea or answer as aforesaid, shall have been left at the office of the solicitor to the treasury, or such further time as shall be allowed by the court or a judge: provided always, that it shall be lawful for the Lord Chancellor, on the application of the attorney-general or of the suppliant, to change the court in which such petition shall be prosecuted, or the venue for the trial of the same.

Power to change the Court or venue.

Time for answering by other persons.

V. In case any such petition of right shall be presented for the recovery of any real or personal property, or any right in or to the same, which shall have been granted away or disposed of by or on behalf of her Majesty or her predecessors, a copy of such petition, allowance, and fiat shall be served upon or left at the last or usual or last known place of abode of the person in the possession, occupation, or enjoyment of such property or right, endorsed with a notice in the form set forth in the schedule (No. 3), requiring such person to appear thereto within eight days, and to plead or answer thereto in the court in which the same shall be prosecuted within fourteen days after the same shall have been so served or left as aforesaid; and it shall not be necessary to issue any scire facias or other process to such person for the purpose of requiring him to appear and plead or answer to such petition, but he shall within the time so limited, if it be intended by him to contest such petition, enter an appearance to the same in the form set forth in schedule (No. 4) to this Act annexed, or to the like effect, and shall plead, answer, or demur to the said petition within the time specified in such notice, or such further time as shall be allowed by the court or judge.

The answer or plea to such petition.

VI. Such petition may be answered by way of answer, plea, or demurrer in a court of equity, or in a court of common law, by way of plea or demurrer, or by both pleas and demurrer, by or in the name of her Majesty's attorney-general on behalf of her Majesty, and by or on behalf of any other person who may in pursuance hereof be called upon



to plead or answer thereto, in the same manner as if such petition in a court of equity were a bill filed therein, or if the petition be prosecuted in a court of common law as if the same were a declaration in a personal action, and without the necessity for any inquisition finding the truth of such petition or the right of the suppliant, and such and the same matter as would be sufficient ground of answer or defence in point of law or fact to such petition on the behalf of her Majesty may be alleged on behalf of any such other person as aforesaid called on to plead or answer thereto.

PETITIONS OF RIGHT.

Petitions will now be answered by statement of defence and demurrer in form prescribed by the Judicature Acts (*k*).

VII. So far as the same may be applicable, and except in so far as may be inconsistent with this Act, the laws and statutes in force as to pleading, evidence, hearing, and trial, security for costs, amendment, arbitration, special cases, the means of procuring and taking evidence, set-off, appeal, and proceedings in error in suits in equity, and personal actions between subject and subject, and the practice and course of procedure of the said courts of law and equity respectively for the time being in reference to such suits and personal actions, shall, unless the court in which the petition is prosecuted shall otherwise order, be applicable and apply and extend to such petition of right: provided always, that nothing in this statute shall be construed to give to the subject any remedy against the crown in any case in which he would not have been entitled to such remedy before the passing of this Act.

Procedure between subject and subject to extend to petitions of right, so far as applicable.

The procedure under the Judicature Acts apply to petitions of right.

VIII. In case of a failure on the behalf of her Majesty, or of any such other person as aforesaid called upon to answer or plead to such petition, to plead, answer, or demur in due time, either to such petition or at any subsequent stage of the proceedings thereon, the suppliant shall be at liberty to apply to the court or a judge for an order that the petition may be taken as confessed; and it shall be lawful for such court or judge, on being satisfied that there has been such failure to plead, answer, or demur in due time, to order that such petition may be taken as confessed as against her Majesty or such other party so making default; and in case of default on the behalf of her Majesty and any other such person (if any) called upon as aforesaid to answer or plead thereto, a decree may be made by the court, or leave may be given by the court, on the application of the suppliant, to sign judgment in favour of the suppliant: provided always, that such decree or judgment may afterwards be set aside by such court or a judge, in their or his discretion, on such terms as to them or him shall seem fit.

Decrees or judgments by default.

IX. Upon every such petition of right the decree or judgment of the court, whether given upon demurrer upon the pleadings or upon

Form of judgment or decree.

(*k*) Ante, pp. 239, 245.



**Persons or  
Matters.**

a default to answer or plead in time, or after hearing or verdict, or in error, shall be that the suppliant is or is not entitled either to the whole or to some portion of the relief sought by his petition, or such other relief as the court may think right, and such court may give a decree or judgment that the suppliant is entitled to such relief, and upon such terms and conditions (if any) as such court shall think just.

**Effect of  
judgment  
of amoveas  
manus.**

X. In all cases in which the judgment commonly called a judgment of amoveas manus has heretofore been pronounced or given upon a petition of right, a judgment that the suppliant is entitled to relief as heretofore provided shall be of such and the same effect as such judgment of amoveas manus.

**Costs recoverable.**

XI. Upon any such petition of right the attorney-general or other person appearing on behalf of her Majesty, and every such other person as aforesaid who shall appear and plead or answer to such petition, shall be entitled respectively to recover costs against the suppliant, in the same manner, and subject to the same restrictions and discretion, and under the same rules, regulations, and provisions, so far as they are applicable, as are or may be usually adopted or in force touching the payment or receipt of costs in proceedings between subject and subject, and for the recovery of such costs such and the same remedies and writs of execution as are authorized for enforcing payment of costs upon judgments in personal actions or decrees, rules, or orders, shall and may be prosecuted, sued out, and executed respectively by or on behalf of her Majesty and of such other person as aforesaid as shall appear and plead to such petition, and any costs recovered on behalf of her Majesty shall be paid into the exchequer, and shall become part of the consolidated fund, except where such petition shall be defended on behalf of her Majesty in her private capacity, in which case such costs shall be paid to the treasurer of her Majesty's household, or such other person as her Majesty shall appoint to receive the same.

**The suppliant to be entitled to costs.**

XII. Upon any such petition of right the suppliant shall be entitled to costs against her Majesty, and also against any other person appearing or pleading or answering to any such petition of right, in like manner, and subject to the same rules, regulations, and provisions, restrictions, and discretion, as far as they are applicable, as are or may be usually adopted or in force touching the right to recover costs in proceedings between subject and subject; and for the recovery of any such costs from any such person, other than her Majesty, appearing or pleading or answering in pursuance hereof, to any such petition of right, such and the same remedies and writs of execution as are authorized for enforcing payment of costs upon rules, orders, decrees, or judgments in personal actions between subject and subject shall and may be prosecuted, sued out, and executed on behalf of such suppliant.

**Decree or judgment to be certified.**

XIII. Whenever, upon any such petition of right, a judgment, order, or decree shall be given or made that the suppliant is entitled to relief, and there shall be no rehearing, appeal, or writ of error, or in case of an



appeal or proceedings in error a judgment, order, or decree shall have been affirmed, given, or made that the suppliant is entitled to relief, or upon any rule or order being made entitling the suppliant to costs, any one of the judges of the court in which such petition shall have been prosecuted shall and may, upon application in behalf of the suppliant, after the lapse of fourteen days from the making, giving, or affirming of such judgment or decree, rule, or order, certify to the commissioners of her Majesty's treasury, or to the treasurer of her Majesty's household, as the case may require, the tenor and purport of the same, in the form in the Schedule (No 5) to this Act annexed, or to the like effect; and such certificate may be sent to or left at the office of the commissioners of her Majesty's treasury, or of the treasurer of her Majesty's household, as the case may be.

Petitions of  
Right.

XIV. It shall be lawful for the commissioners of her Majesty's treasury and they are hereby required to pay the amount of any moneys and costs as to which a judgment or decree, rule or order shall be given or made that the suppliant in any such petition of right is entitled, and of which judgment or decree, rule, or order the tenor and purport shall have been so certified to them as aforesaid, out of any moneys in their hands for the time being legally applicable thereto, or which may be hereafter voted by parliament for that purpose, provided such petition shall relate to any public matter; and in case the same shall relate to any private property of or enjoyed by her Majesty, or any contract or engagement made by or on behalf of her Majesty, or any matter affecting her Majesty in her private capacity, a certificate in the form aforesaid may be sent to or left at the office of the treasurer of her Majesty's household, or such other person as her Majesty shall from time to time appoint to receive the same, and the amount to which the suppliant is entitled shall be paid to him out of such funds or moneys as her Majesty shall be graciously pleased to direct to be applied for that purpose.

Satisfaction  
of the judg-  
ment and  
costs.

XV. It shall be lawful for the judges of the said courts of law and equity respectively, or any three or more of the judges of the Court of Chancery, of whom the Lord Chancellor shall be one, and for any eight or more of the judges of the courts of common law, of whom the chiefs of each of the said courts shall be three, from time to time to make all such General Rules and Orders in their said respective courts of law and equity, for regulating the pleading and practice on such petitions of right, and for the effectual execution of this Act and of the intention and object hereof, and for fixing the costs to be allowed for and in respect of the several matters herein contained, and the performance thereof, and for the government and conduct of the officers of their respective courts in and relating to the distribution and performance of the duties and business to be done or performed in execution of this Act, as such judges may think fit, reasonable, necessary, or proper, and to frame such writs and forms of proceedings as to them may seem expedient for the purposes aforesaid; and all such rules, orders, or regula-

Power to  
judges to  
make rules  
and regula-  
tions, &c.



PETITIONS OF  
RIGHT.

tions shall be laid before both houses of parliament, if parliament be then sitting, immediately upon the making of the same, or if parliament be not sitting, then within five days after the next meeting thereof; and no such rule, order, or regulation shall have effect until three months after the same shall have been so laid before both houses of parliament; and any rule, order, or regulation so made shall from and after such time aforesaid be binding and obligatory on the said courts, and on any courts of error or appeal into which any judgments or decrees of the said courts shall be carried by any writ of error or appeal, and be of the like force and effect as if the provisions contained therein had been expressly enacted by parliament: provided always, that it shall be lawful for the Queen's most excellent Majesty, by any proclamation inserted in the London Gazette, or for either of the houses of parliament, by any resolution passed at any time within three months next after such rules, orders, and regulations shall have been laid before parliament, to suspend the whole or any part of such rules, orders, or regulations, and in such case the whole, or such part thereof as shall be so suspended, shall not be binding and obligatory on the said courts.

Chancery  
Rules.

The common law courts issued no Rules under this section, but a Chancery Order was issued on 1st February, 1862, which, under section 21 of the Judicature Act, 1875, will now be applicable to all Divisions of the High Court of Justice (1).

The Chancery Order referred to was as follows:—

1. Upon her Majesty's fiat being obtained to any petition of right, presented in pursuance of the said Act, and intituled in the Court of Chancery, such petition with the fiat thereon, together with a printed copy of such petition and fiat (if the petition is in writing), shall be filed at the office of the Clerks of Records and Writs.
2. Every such petition, or the printed copy thereof, so filed, shall be marked with the words "Lord Chancellor" or "Master of the Rolls;" and if with the words "Lord Chancellor," then also with the title of the Vice-Chancellor before whom it is intended to be prosecuted.
3. Every copy of a petition of right left at the office of the Solicitors of the Treasury, in pursuance of the said Act, and every copy of a petition of right served upon or left at the last or usual, or last known place of abode of any person, under the provisions of that Act shall be a printed copy sealed with the seal of the office of the Clerks of Records and Writs, in the same manner as copies of bills are now sealed. And the leaving or serving of any copy not printed or not sealed with the office seal, shall be of no effect for any of the purposes of the said Act.

(1) Ante, p. 174.



4. A suppliant in any petition under the said Act desiring to file interrogatories for the examination of any person or persons who may be required to plead or answer thereto [other than her Majesty's attorney-general], shall file such interrogatories at the same time as such petition. And a copy, examined and marked by the Clerks of Records and Writs, of the interrogatories which any respondent is required to answer shall be served upon such respondent, together with the copy of the petition. PETITIONS OF  
RIGHT.  
Chancery  
Rules.
5. Any person who might be admitted to prosecute a suit in this court *in formâ pauperis* may be admitted to prosecute *in formâ pauperis* a petition of right instituted in this court. And any person who might, if a defendant to an ordinary suit in this court, have been admitted to defend *in formâ pauperis*, may be admitted to make his defence *in formâ pauperis* to any petition of right instituted in this court which he may be required to plead or answer to. But no person shall be admitted to prosecute any petition *in formâ pauperis*, without a certificate of counsel that he conceives the case to be proper for relief in this court.
6. The same orders and rules shall apply with regard to any persons admitted to sue or defend *in formâ pauperis* under these orders as are applicable with regard to paupers in suits between subject and subject.
7. So far as the same may be applicable, and except in so far as may be inconsistent with the said Act and with the preceding orders, the general orders from time to time in force as to proceedings in suits in this court, and the practice and course of proceeding in this court in reference to such suits shall be applicable, and apply and extend to proceedings in this court in petitions under the said Act which are for the purposes of this order to be considered as bills.
8. The duties which, under the said Act and the said orders, may be required to be performed by officers of this court, shall be performed by the officers respectively who perform duties of a similar nature in suits in this court between subject and subject, and the fees and allowances payable to all officers and solicitors of this court in respect of matters under the said Act shall be such fees and allowances as by the practice of the court and the general orders from time to time in force they are entitled to take and charge for similar proceedings in cases between subject and subject.

These rules are applicable except as modified by the Judicature Acts and Rules (m). Each petition will, in future, be entitled, In the High Court of Justice, with the name of a Division, and of the judge, if in the Chancery Division.

(m) Sec. 21, ante, p. 174.



PETITIONS OF  
RIGHT.

XVI. In the construction of this Act the words "Her Majesty" shall extend to and include her Majesty's successors; and the words "Lord High Chancellor" and "Lord Chancellor" respectively shall mean and include Keeper of the Great Seal and commissioners for executing the office of Lord Chancellor or Keeper of the Great Seal; the word "court" shall be understood to mean any one of the superior courts of common law or equity at Westminster in which any such petition is presented; the word "relief" shall comprehend every species of relief claimed or prayed for in any such petition of right, whether a restitution of any incorporeal right, or a return of lands or chattels, or a payment of money or damages, or otherwise; and the word "judge" shall be understood to mean a judge or baron of any of the said courts respectively; and wherever in this Act, in describing or referring to any person, party, or thing, any word importing the singular number or masculine or feminine gender is used, the same shall be understood to include and be applicable to several persons and parties as well as one person or party, and to females as well as males, and males as well as females, and bodies corporate as well as individuals, and several matters and things as well as one matter or thing, unless it otherwise be provided, or there be something in the subject or context repugnant to such construction.

Short title  
of Act.

XVII. In citing this Act in any instrument, document, or proceeding it shall be sufficient to use the expression "The Petitions of Right Act, 1860."

XVIII. Nothing in this Act contained shall prevent any suppliant from proceeding as before the passing of this Act.

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SCHEDULE referred to in the foregoing Act.

No. 1.

*Petition.*

In the High Court of Justice.

Division.

To the Queen's most Excellent Majesty.

The humble petition of *A.B.* of \_\_\_\_\_, by his solicitor, *E.F.* of \_\_\_\_\_, showeth that [*state the facts*].

*Conclusion.*

Your suppliant therefore humbly prays that, &c.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ A.D.

(Signed) *A.B.*

or *C.D.*, counsel for *A.B.*

or *E.F.*, solicitor for *A.B.*

N.B.—The suppliant proposes that this petition shall be tried at Westminster.



No. 2.

The suppliant prays for a *statement of defence* on behalf of her Majesty within twenty-eight days after the date hereof, or otherwise that the petition may be taken as confessed.

*Conclude as at No. 1.*

No. 3.

To *A.B.*

You are hereby required to appear to the within petition, in the *High Court of Justice [Division]*, within eight days, and to plead or answer thereto within fourteen after the date hereof.

Take notice, that if you fail to appear or plead or answer in due time the said petition may, as against you, be ordered to be taken as confessed.

Dated, &c.

*Conclude as at No. 1.*

No. 4.

In the High Court of Justice.  
Division.

Petition of right.

<i>A.B.</i> , Suppliant	} <i>C.D.</i> appears in person.
v.	
The Queen.	
	} <i>E.F.</i> , solicitor for <i>C.D.</i> , appears for him.

*If the appearance be in person, the address of the party appearing to be given.*

Entered the            day of            18   .

No. 5.

*Certificate of a Judge of the Court of the tenor and purport of the judgment or decree.*

To the Commissioners of Her Majesty's Treasury [or the Treasurer of Her Majesty's Household].

Petition of right of *A.B.* in the *High Court of Justice [Division]*.

I humbly certify, that on the            day of            A.D.            it was by the said *Division of the said High Court* adjudged [or decreed or ordered] that the above-named suppliant was entitled to, &c.

*Judge's signature.*



## ADMIRALTY DIVISION.

We have already given a concise description of the jurisdiction of this Court and of the exclusive powers assigned to it by the Judicature Acts (*n*). The practice of this Division of the High Court, except so far as varied by Rules of Court, still remains (*o*).

## PROBATE DIVISION.

We have also given a description of this Court and the powers it possesses. The statutes regulating it are 20 & 21 Vict. c. 77 ; 21 & 22 Vict. c. 95 (*p*).

Rules and Orders of Court regulating the practice will be found in 31 L. J. Reports.

The practice of this Division remains, except as varied by Rules of Court (*q*).

## MATRIMONIAL AND DIVORCE.

The jurisdiction of this Court will be found in a previous part of this work, and remains unaltered, except as slightly varied by Rules of Court (*r*).

## APPLICABLE TO EACH DIVISION.

## EVIDENCE ON COMMISSION.

The former practice upon this subject virtually remains: see 1 Will. 4, c. 22; Chitty's Practice, vol. ii. p. 337, *et seq.*

## IMPRISONMENT FOR DEBT.

The former practice remains, except as slightly altered by a few forms: see 32 & 33 Vict. c. 62, and Chitty's Practice, vol. ii. (12th ed).

(*n*) Ante, pp. 18, 123.

(*o*) Ante, p. 172.

(*p*) Ante, pp. 20, 172.

(*q*) Ante, p. 172.

(*r*) Ante, pp. 21, 172.



## CHAPTER X.

AN ANALYSIS OF THE PRINCIPAL PROCEEDINGS IN AN ACTION  
AT LAW, AND A SUIT IN EQUITY.

WE have already pointed out the alterations made in the procedure of the Courts (*a*), but inasmuch as it is expressly provided by the Supreme Court of Judicature Acts, 1873 and 1875, that when no alterations or substituted proceedings are provided, the old forms are to be used, and the former practice to be continued (*b*), except so far as they are inconsistent with those Acts, or as may be refused by a judge or master at chambers (*c*), we have not considered it altogether useless to give a short summary of the several steps and proceedings which were adopted in actions in the Supreme Courts of Common Law, and of suits in the Chancery Courts, prior to the passing of the Supreme Court of Judicature Acts, 1873 and 1875.

We may further observe that the Statute Law Revision Act of 1875 includes Turner's Act, the Chancery Amendment Act of 1852, and the Common Law Procedure Acts of 1852, 1854, and 1860, and repeals formal portions of some of them only. This leaves unrepealed much of the old method of procedure.

The references to "Orders" and "Rules" in this chapter are the Orders and Rules annexed to the Judicature Acts.

(*a*) See ante, pp. 82-89; 38 & 39 Vict. c. 77, s. 21; ante, pp. 171-174, 227-233, 239; and Appendix C., ante, p. 333.

(*b*) See 38 & 39 Vict. c. 77, s. 21, ante, pp. 107, 140, 174.

(*c*) See Order liv., ante, p. 296.



## AN ANALYSIS OF PROCEEDINGS IN THE SUPERIOR COURTS OF COMMON LAW.

### BEFORE ACTION.

Before  
Action.

In trover : demand the goods to prove conversion. On bill of exchange, give notice of dishonour to all parties to the bill except acceptor (*d*). Against public officers in certain cases for anything done in the performance of their duty, give one calendar month's notice (*e*). Attorneys for professional services to deliver a signed bill, (or unsigned if accompanied by signed letter referring thereto) one calendar month before action (*f*). Against constable acting under warrant of a justice, make demand in writing of the perusal and copy of the warrant, which must be left at the constable's usual place of abode ; if not granted within six days, plaintiff may commence his action against the constable alone ; but if granted, he must join the justice as a co-defendant, and then the mere production of the warrant at the trial will entitle the constable to a verdict, though, if the justice has no jurisdiction, the plaintiff will recover against him. Any one before action may make a legal tender of amount due, in legal money, namely : up to 1s. in bronze to 40s. in silver, and any amount in gold or Bank of England notes. Australian gold may be tendered. No change can be required, but a tender of a larger sum is good. A legal tender before action, if accompanied by payment into Court after action, relieves the defendant from all costs.

### WRIT OF SUMMONS

Writ of  
Summons.

Must be served personally on defendant within six calendar months of the date thereof—or if renewed (within the six months), from the date of such renewal (*g*). Within three days after service memorandum of the day of month and week of service must be endorsed ; if not,

(*d*) See ante, p. 42.

(*e*) See Rawlinson on Corporations, 6th ed., p. 184 ; Chitty's Practice, vol. ii. p. 1301.

(*f*) 6 & 7 Vict. c. 73, s. 37 ; Bullens' Pleadings, 3rd ed., p. 499.

(*g*) As to new practice, see Order ix., ante, p. 203.



plaintiff cannot sign final judgment by default for want of appearance. May be specially endorsed, if defendant is within jurisdiction and damages are liquidated. Concurrent writs may be issued and remain in force while original writ does (*h*). If defendant is going out of the jurisdiction, order to arrest and imprison him may be obtained, on affidavit. Defendant may be imprisoned for not longer than six months, unless and until he gives security to the amount claimed, that he will not go out of England without leave of the Court.

#### APPEARANCE

To be entered within eight days (*i*) after service of the writ, inclusive of the day of service ; if action under Bills of Exchange Act, within twelve days by leave of a judge obtained *ex parte*, on affidavit showing a defence on the merits, or that it is reasonable defendant should be allowed to appear and defend. Before entering appearance defendant may take out summons:—1. For particulars, or better particulars of plaintiff's demand ; 2. To stay on payment of what he considers due and costs ; 3. Where amount endorsed on writ does not exceed £50 (or if reduced by payment, set-off or otherwise to a sum not exceeding £50) within eight days after service of writ, to remit cause to County Court ; or, 4. In any action of tort to remit cause to County Court, or for plaintiff to give security for costs, or to stay proceedings on affidavit that plaintiff has no visible means of paying defendant's costs if verdict be not found for him, unless plaintiff satisfies judge that he has cause fit to be prosecuted in Superior Court. If all plaintiffs are out of the jurisdiction defendant may apply for security for costs.

Appearances.

#### DECLARATION

May be delivered any time before the end of the term next after appearance ; if not, defendant may give four days' notice to do so, and in default sign judgment of *non pros*. Plaintiff must declare within a year after appear-

Declaration.

(*h*) Order vi., ante, p. 200.

(*i*) Order xii., ante, p. 208.



ance. On the declaration should be endorsed, a notice to plead in eight days otherwise judgment, but this may be delivered separately. Several causes of action (except replevin and ejectment) by and against the same parties in the same right may be joined together (*j*).

#### PLEAS

Pleas.

To be delivered within eight days after declaration, unless further time be granted. Pleas were as follows : 1. In abatement, *i.e.*, pointing out some informality by the plaintiff, and showing how he ought to have proceeded ; or, 2. in Bar. *i.e.*, an answer to the action. A plea in Bar is either a *traverse*, a denial of the facts stated in the declaration ; or, *in confession and avoidance*, being an admission of the facts, but an averment of fresh matter which destroys the plaintiff's right of action (*k*). The following several matters mentioned in the 84th section of the first Common Law Procedure Act may be pleaded together, so far as they are applicable, without leave, but leave must be obtained on summons to plead any other pleas :—1. A plea denying the debt or contract alleged in the declaration ; 2. Tender as to part ; 3. Statute of Limitations ; 4. Set off ; 5. Bankruptcy of defendant ; 6. Discharge under an Insolvent Act ; 7. Plene administravit ; 8. Plene administravit præter ; 9. Infancy ; 10. Coverture ; 11. Payment ; 12. Accord and satisfaction ; 13. Release ; 14. Not guilty ; 15. A denial that the property, an injury to which is complained of, is the plaintiff's ; 16. Leave and license ; 17. Son assault demesne. Leave may be obtained to plead and demur to the same part of the same pleading, upon affidavit, if required, by the plaintiff or his attorney, that he (the defendant) is advised and believes there is just ground to traverse the several matters proposed to be traversed, and that the several matters sought to be pleaded by way of confession and avoidance, are respectively true in substance and in fact ; and, further, that objections raised are good and valid in law. If pleas are framed to embarrass, plaintiff may apply to have them struck out.

(*j*) Order xvii., ante, pp. 225, 226.

(*k*) Order xxii., ante, p. 239.



## REPLICATION.

Defendant may rejoin; plaintiff surrejoin; defendant rebut; plaintiff surrebut;—ending in joinder of issue (*l*). The general issue in covenant, *non est factum*, denies the execution of the deed; in assumpsit, *non assumpsit*, denies making the contract; in debt, *never indebted*, denies those facts from which the liability of the defendant arises; in torts, *not guilty*, denies the breach of duty or wrongful act complained of, but not the averments.

## DISCOVERY OF FACTS

May be obtained by either party by interrogatories, but only by leave of the Court, on affidavit of *the party and his attorney or agent*, that he will derive material benefit from the discovery sought, that he has good cause of action or defence on the merits; and, if by defendant, that the application is not made for the purpose of delay. The interrogatories are filed, and answered on oath within ten days (*m*).

## DISCOVERY OF DOCUMENTS

May be obtained by either party on affidavit that the documents, to the production of which he is entitled, are in the possession of opposite party; who is then ordered to state, on oath, what documents he has in his possession or power relating to the matter in dispute, and what objection (if any) he has to produce them; thereon such order is made as to production as is just (*m*).

## CAUSE AT ISSUE.

A copy of all the pleadings is then made by plaintiff, and delivered to defendant—this is called the issue; also a copy on parchment, which is lodged with the associate—this is called the record. Notice of trial (ten days full, four days short) may be endorsed on issue or delivered separately. Cause is entered for trial with the associate.

(*l*) Order xxiv., et seq.; ante, p. 242.

(*m*) Order xxxi., ante, p. 252.



Witnesses subpoenaed, and notices to produce, admit, and inspect documents given.

#### TRIAL.

If the Judge rules contrary to law, or improperly admits or rejects evidence, he may be asked to reserve the point, and if he refuse, a Bill of Exceptions may be tendered. The Bill of Exceptions (*n*) is heard before the Exchequer Chamber, *i.e.*, the judges of the Courts other than that in which the action is. Appeal to the House of Lords (*o*). Either party may apply for the costs of a special jury or certificate that refusal to admit documents was reasonable.

After trial, the Postea (*i.e.*) the record, with verdict of jury endorsed, is obtained from the associate, Judgment signed, and costs taxed. The successful party was generally entitled to costs (*p*).

#### EXECUTION

May issue at the expiration of fourteen days after verdict, unless judge certifies for speedy execution, then at the expiration of four days; or for immediate execution, then at once; but otherwise within six years and during the lives of the parties, otherwise judgment must be revived by entering suggestion or writ of revivor. Suggestion is entered by leave of the Court. Writ of revivor is allowed without any rule or order, when judgment is less than ten years old; if over ten and under fifteen, by Rule of Court or judge's order; if over fifteen, by rule to shew cause.

#### NEW TRIAL

Applications for new trial, or for leave to enter verdict or nonsuit, pursuant to leave reserved, to be made within first four days of term next after verdict (*q*).

#### APPEAL TO EXCHEQUER CHAMBER.

An appeal lies in all cases, unless it be matter of discretion for the judge to decide, then no appeal without

(*n*) Order lviii., ante, p. 300.

(*o*) Ante, pp. 15, 103, 159.

(*p*) As to new rule, see ante,

pp. 130, 289, post, p. 483.

(*q*) Order xxxix., ante, pp. 103, 274.



leave. In case of motion for new trial on the ground that judge has not ruled according to law, there is no appeal unless the Court is not unanimous, or leave be given (r).

#### ERROR

May be brought within six years, except in cases of disability—Error in law in the Exchequer Chamber, error in fact in the Court below.

#### DEMURRER.

Either party may demur. It denies the sufficiency in point of law of the adversary's pleading, but admits the facts from which the law is inferred. Some substantial matter of law to be argued must be stated in the margin. Issue is joined in demurrer, demurrer books, *i.e.*, copies of so much of the pleadings as relate to the demurrer, are made up and delivered to the judges, with copies of the points to be argued. Demurrer is entered in the Special Paper, and heard by the Court in banco (s).

#### COSTS.

Each party is entitled to the costs of those issues found for him, whether of law or fact, but the successful party (*i.e.*, he for whom the material issue is found) is entitled to the costs of the cause, and he for whom the material issue of fact is found to the costs of the trial and postea. If plaintiff recovers a sum not exceeding 20*l.* in contract, or 10*l.* in tort, by verdict, judgment, demurrer, or otherwise, he is not entitled to any costs unless the judge certify on record that there was sufficient reason for bringing such action in the Superior Court, or the Court or a judge allow such costs (t).

(r) See Order lviii., ante, p. 300.

(s) Order xxviii., ante, p. 245.

(t) See ante, p. 482, title "Trial;"

as to the new Rule upon this subject, see Order lv., ante, p. 298, and pp. 31, 138, 428, et seq.



## SPECIAL ACTIONS—EJECTMENT—REPLEVIN.

## EJECTMENT.

**Ejectment.** Writ of summons is directed to person in possession by name, and all persons entitled to defend the possession of the property claimed. The premises are described in writ with reasonable certainty, and this description supersedes the necessity of the ordinary pleadings in other actions. The writ is in force for three months only, and may be served personally on tenant in possession anywhere, even abroad, or on his wife anywhere, provided she is living with her husband. In case of vacant possession, it may be served by posting a copy of the writ upon the door or other conspicuous part of the premises. Service upon a child or servant is good, if defendant afterwards acknowledge that he received it. Defendant must appear within sixteen days, and may, by notice, limit his defence to a portion of the premises only. The issue may be made up immediately after appearance, and sets forth the particulars mentioned in the writ, date of appearance, and the notice limiting the defence (if any).

## REPLEVIN.

**Replevin.** The pleadings are:—By plaintiff—Declaration; By defendant—Avowry, if goods were taken in his own right, or Cognizance, if in the right of another. By plaintiff—Plea in Bar; by defendant—Replication; and so on. Either party at his option may make up the issue, give notice of trial, enter record, and set down cause for hearing.

## AN ANALYSIS OF PROCEEDINGS IN CHANCERY.

## BILL OF COMPLAINT

**Bill of complaint.** Must be printed and served within the jurisdiction 12 weeks after filing. Written bill may be filed instead of



printed bill, upon solicitor filing same, undertaking to file printed bill within 14 days (*u*). Amendment of bill 1 month before answer or last answer deemed sufficient, any number of times as of course, or after sufficiency of answer or last answer once, as of course; more frequently, with special leave. Where order to amend obtained, amendment must be within 14 days from order. Bill of complaint.

#### APPEARANCE

After service of bill (exclusive of day of service) within 8 days; may be entered by plaintiff for defendant at the expiration of such 8 days, but within 21 days from service (*x*).

#### INTERROGATORIES

Must be filed within 8 days from time limited for appearance (*y*); any time before appearance; or, after appearance within 8 days.

#### ANSWER, PLEA.

Within 8 days, if plaintiff does not file exceptions within 6 weeks from filing answer; or, if exceptions being filed are not set down for hearing within 14 days after filing of exceptions; or if (after filing further answer) plaintiff does not set down old exceptions within 14 days, then answer is taken as sufficient. Defendant must submit within 8 days from filing of exceptions. To be filed within 28 days from service of interrogatories (*z*).

#### DISCLAIMER

Voluntary answer or plea to be filed within 14 days from time within which interrogatories might have been served. This in effect amounts to 30 days from service of bill.

#### DEMURRER

To be filed 12 days from appearance (*a*). Either party may set down demurrer to whole bill within 12 days; to part of bill, within 21 days.

(*u*) Order xxi., ante, p. 237;  
Daniell's Ch. Practice, 5th ed., p. 323.

(*x*) Order xii., ante, p. 208.

(*y*) Order xxxi., ante, p. 252.

(*z*) Order xxii., ante, p. 239.

(*a*) Order xxviii., ante, p. 245.



## HEARING OF SUIT.

Plaintiff must either set down cause on bill or answer, give notice of motion for decree, or file replication within 1 month (28 days) from last answer being deemed sufficient. If replication filed (*i.e.* issue joined), either party may apply at chambers for order to take evidence *vivâ voce* within (after issue joined) 14 days (*b*); evidence closed within 8 weeks after issue joined. After evidence closed, any witness who has been examined *ex parte* before examiner, may be cross-examined and re-examined before the Court on hearing, on notice of 14 days (*c*).

## MOTION FOR DECREE.

Notice of motion to be given by plaintiff to defendant of not less than 28 days; plaintiff sets out at foot of notice list of affidavits he intends to use. Defendant has 14 days to answer by filing affidavits. Plaintiff then has 7 days to file affidavits in reply. Witnesses may be cross-examined (after the expiration of the time allowed to the plaintiff to file his affidavits in reply) on notice, within 14 days. 48 hours' notice of time and place to witness. Cause to be set down by plaintiff within remaining 7 days, *i.e.* within 1 lunar month from notice of motion. After decree or order made, leave briefs and papers with registrar of the day, within 7 days (*d*).

## PROCEEDINGS IN CHAMBERS.

Decree or order must be carried in to chief clerk's chambers in order to be worked out within (from entry) 10 days. Summons to proceed on decree must be served on opposite party (before return of summons) 2 clear days. The chief clerk's certificate lies at chambers, for opinion of judge to be taken on summons, for the space of 4 days. At expiration of these 4 days, it will be signed by judge and filed. After signature by judge and filing, certificate

(*b*) Order xxxvi., ante, p. 264.

(*d*) Orders xxxvi., xl., ante, pp. 265,

(*c*) Orders xxxvii., xxxviii., ante, pp. 271, 272.

275.



can be varied on motion or summons by dissatisfied party within (from filing) 8 clear days (*e*).

#### FURTHER CONSIDERATION.

Cause may be set down on further consideration after the expiration of 8 days and within (from filing of chief clerk's certificate) 14 days (*f*).

#### APPEAL.

Decree must be enrolled as of course (from being made) within 6 months. By special leave of Court, within 5 years. Caveat against enrolment must be entered and prosecuted within (after docket has been left to be signed by the proper officer of the Court) 28 days. Appeal from Vice-Chancellors and Masters of the Rolls to the House of Lords, within 2 years of enrolment; or within 14 days after the first day of the session or meeting of Parliament next ensuing such 2 years (*g*).

#### REVIVOR.

Order to revive may be obtained of course, which becomes absolute 12 days after service.

#### COSTS.

The costs of all proceedings in Chancery are in the discretion of the Court. This practice differs from Common Law as well as from the new practice under the Judicature Acts (*h*).

(*e*) Order liv., ante, p. 296.

(*f*) Order liii., ante, p. 295.

(*g*) 38 & 39 Vict. c. 77, s. 2; ante, pp. 15, 100-103, 159, 168; Daniell's

Ch. Prac. 5th ed., p. 1361.

(*h*) See ante, pp. 31, 138, 298, 428, 481, 483.







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